

### **Components of Possible Measure:**

The key functional components of any measure are largely dictated by SB 63, along with other existing statutory and regulatory law. Should the Board direct staff to prepare a measure for its consideration, it would need to include the following components in substantially similar form. In addition, findings and declarations, definitions, a statement of purpose and language relating to enactment/effective dates of the tax would need to be included. The following is intended to be illustrative only and does not contain all necessary components or language required for a measure that could be submitted to the voters.

---

### **Expenditure of Tax Proceeds**

The district shall distribute tax revenues on an annual basis as follows:

(a) The district shall pay the administrative costs associated with the collection of the revenues incurred by the California Department of Tax and Fee Administration, and the amounts necessary for the costs incurred by the district or commission to perform the duties required under this title, including, but not limited to, election cost reimbursements specified in Section 67740, costs incurred for the financial efficiency review described in Section 67762, costs incurred for any required legal defense, and other one-time costs associated with administering the tax ordinance authorized by this title.

(b) After the amounts paid in subdivision (a), the district shall transfer the remaining revenues, with no discretion to withhold, reduce, delay, modify, specify the use of, or condition those revenues, as follows:

(1) (A) The revenues described in subparagraph (B) to the commission for the ongoing costs associated with administering this title. If the amount transferred pursuant to this paragraph exceeds that which is necessary for administrative costs in a given year, the commission may use those excess funds for the purposes identified in paragraphs (10) to (12), inclusive.

(B) All of the following revenues shall be transferred to the commission pursuant to this paragraph:

- (i) 0.25 percent of all revenues generated within the territory of the County of Alameda.
- (ii) 0.25 percent of all revenues generated within the territory of the County of Contra Costa.
- (iii) 0.13 percent of all revenues generated within the territory of the City and County of San Francisco.
- (iv) 0.25 percent of all revenues generated within the territory of the County of San Mateo.

(v) 0.25 percent of all revenues generated within the territory of the County of Santa Clara.

(2) The following revenues to the commission for allocation to BART for transit operations expenses:

- (A) 64.70 percent of all revenues generated within the territory of the County of Alameda.
- (B) 58.59 percent of all revenues generated within the territory of the County of Contra Costa.
- (C) 29.14 percent of all revenues generated within the territory of the City and County of San Francisco.
- (D) 26.64 percent of all revenues generated within the territory of the County of San Mateo.

(3) The following revenues to the commission for allocation to Muni for transit operations expenses:

- (A) 1.09 percent of all revenues generated within the territory of the County of Contra Costa.
- (B) 62.87 percent of all revenues generated within the territory of the City and County of San Francisco.
- (C) 7.40 percent of all revenues generated within the territory of the County of San Mateo.

(4) The following revenues to the commission for allocation to Caltrain for transit operations expenses:

- (A) 3.97 percent of all revenues generated within the territory of the City and County of San Francisco.
- (B) 24.07 percent of all revenues generated within the territory of the County of San Mateo.
- (C) 10.38 percent of all revenues generated within the territory of the County of Santa Clara.

(5) The following revenues to the commission for allocation to AC Transit for transit operations expenses:

- (A) 21.25 percent of all revenues generated within the territory of the County of Alameda.
- (B) 3.70 percent of all revenues generated within the territory of the County of Contra Costa.

(6) 2.43 percent of all revenues generated within the territory of the County of Alameda to the commission for allocation to the Alameda County small bus operators, apportioned among each operator in amounts determined by the Alameda County Transportation Commission, for transit operations expenses.

(7) 11.41 percent of all revenues generated within the territory of the County of Contra Costa to the commission for allocation to the Contra Costa County small bus operators, apportioned

among each operator in amounts determined by the Contra Costa Transportation Authority, for transit operations expenses.

(8) The following revenues to the commission for allocation to San Francisco Bay Ferry for transit operations expenses:

- (A) 1.62 percent of all revenues generated within the territory of the County of Alameda.
- (B) 0.76 percent of all revenues generated within the territory of the County of Contra Costa.
- (C) 0.97 percent of all revenues generated within the territory of the City and County of San Francisco.

(9) 0.40 percent of all revenues generated within the territory of the City and County of San Francisco to the commission for allocation to Golden Gate Transit for transit operations expenses.

(10) The following revenues to the commission for fare programs, including free and reduced-cost transfers and expanding the Clipper START program:

- (A) 2.78 percent of all revenues generated within the territory of the County of Alameda.
- (B) 2.78 percent of all revenues generated within the territory of the County of Contra Costa.
- (C) 1.40 percent of all revenues generated within the territory of the City and County of San Francisco.
- (D) 2.78 percent of all revenues generated within the territory of the County of San Mateo.
- (E) 2.78 percent of all revenues generated within the territory of the County of Santa Clara.

(11) The following revenues to the commission for accessibility programs and projects:

- (A) 1.11 percent of all revenues generated within the territory of the County of Alameda.
- (B) 1.11 percent of all revenues generated within the territory of the County of Contra Costa.
- (C) 0.56 percent of all revenues generated within the territory of the City and County of San Francisco.
- (D) 1.11 percent of all revenues generated within the territory of the County of San Mateo.
- (E) 1.11 percent of all revenues generated within the territory of the County of Santa Clara.

(12) The following revenues to the commission for mapping and wayfinding and transit priority projects and programs:

- (A) 1.11 percent of all revenues generated within the territory of the County of Alameda.

- (B) 1.11 percent of all revenues generated within the territory of the County of Contra Costa.
- (C) 0.56 percent of all revenues generated within the territory of the City and County of San Francisco.
- (D) 1.11 percent of all revenues generated within the territory of the County of San Mateo.
- (E) 1.11 percent of all revenues generated within the territory of the County of Santa Clara.

(13) 4.75 percent of all revenues generated within the territory of the County of Alameda to the Alameda County Transportation Commission for public transit expenses and roadway repavement projects on roads served by fixed-route transit.

(14) 19.20 percent of all revenues generated within the territory of the County of Contra Costa to the Contra Costa Transportation Authority for public transit expenses and roadway repavement projects on roads served by fixed-route transit.

(15) 36.64 percent of all revenues generated within the territory of the County of San Mateo to the San Mateo County Transit District for public transit expenses and roadway repavement projects on roads served by fixed-route transit.

(16) 84.37 percent of all revenues generated within the territory of the County of Santa Clara to the Santa Clara Valley Transportation Authority for public transit expenses and roadway repavement projects on roads served by fixed-route transit.

### **Independent Oversight Committee**

Pursuant to Government Code 67754, the district shall establish an independent oversight committee within six months of the effective date of the tax increase to ensure that any revenues generated pursuant to this title are distributed and transferred by the district consistent with the applicable requirements set forth in this ordinance. The committee may be consolidated with the oversight committee established pursuant to subdivision (h) of Section 30923 of the Streets and Highways Code. The committee shall consist of either one or two representatives from each county included within the jurisdiction of the district appointed by the applicable county board of supervisors. The oversight committee may request any documents from the district to assist the committee in performing its functions.

### **Retail Transactions Tax**

- (a) 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 district, levied on the gross receipts of each retailer from the sale of all tangible personal property sold at retail in the district during the period specified in this ordinance, at the following rates of each retailer's gross receipts:

- (1) 0.5 percent in the Counties of Alameda, Contra Costa, San Mateo, and Santa Clara.
- (2) 1 percent in the City and County of San Francisco.

(b) For purposes of the retail transactions tax imposed by this ordinance, all retail transactions are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or the retailer's 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 adopted by the California Department of Tax and Fee Administration.

### **Use Tax**

(a) An excise tax is hereby imposed on the storage, use, or other consumption in the district of tangible personal property purchased from any retailer during the period specified in this ordinance for storage, use, or other consumption in the district, at the following rates of the sales price of the property:

- (1) 0.5 percent in the Counties of Alameda, Contra Costa, San Mateo, and Santa Clara.
- (2) 1 percent in the City and County of San Francisco.

(b) For purposes of the use tax imposed by this ordinance, 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.

### **Duration**

The tax shall be in effect for fourteen years from the date this ordinance becomes effective.

### **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.

## **Limitations on Adoption of State Law**

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 district 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 district 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 "District" 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.

"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.

C. 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.

D. All amendments to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code that are enacted subsequent to the effective date of this ordinance and that are not inconsistent with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code that are enacted subsequent to the effective date of this ordinance, shall automatically become part of this ordinance, provided that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

### **Exemptions and Exclusions**

The tax imposed by this ordinance shall be subject to the following 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 district which is shipped to a point outside the district, 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 district 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-district 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-district 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 district 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 district 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 district or participates within the district 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 district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the district under the authority of the retailer.

7. "A retailer engaged in business in the District" 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 district.

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 district 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.

### **Contract with the State.**

Prior to the operative date of this ordinance, the district shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this ordinance. In the event the district does not contract with the California Department of Tax and Fee Administration prior to the operative date of this ordinance, the district shall nevertheless so contract and, in that case, the operative date of this ordinance shall be the first day of the first calendar quarter following the execution of the contract.

### **Prohibition on Enjoining Collection.**

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 district, or against any officer of the state or the district, 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.