

Board of Supervisors Agenda Item Report

Submitting Department: Board of Supervisors

Meeting Date: June 25, 2024

SUBJECT

Transactions and Use (Sales) Tax for Roads: Discussion and possible action regarding a resolution calling an election to submit to voters a ballot measure to levy a limited-term 0.5% sales tax in the unincorporated county for roads.

Recommendation:

Pleasure of the board.

4/5 vote required:

Yes

Approved
Unanimous

Distribution Instructions:

Elections, Auditor-Controller, Treasurer's Office, County Counsel, File

ATTACHMENTS

- Staff Report re Sale Tax 6.20.24.pdf
- Draft Ordinance Amador Road Tax.doc
- Draft Resolution of Road Sales Tax.docx

BEFORE THE BOARD OF SUPERVISORS OF THE
COUNTY OF AMADOR, STATE OF CALIFORNIA

IN THE MATTER OF:

RESOLUTION CALLING AN ELECTION TO) RESOLUTION NO. 24-083
SUBMIT TO THE VOTERS A BALLOT)
MEASURE TO LEVY A LIMITED-TERM)
0.75% TRANSACTIONS AND USE TAX IN)
THE UNINCORPORATED COUNTY FOR)
ROADS, APPROVAL OF THE ORDINANCE)
FOR SUBMISSION TO VOTERS, TO)
CONDUCT THE ELECTION, PROVIDING FOR)
THE SUBMISSION OF BALLOT ARGUMENTS)
FOR AND AGAINST THE MEASURE, AND)
DIRECTING THE COUNTY COUNSEL TO)
PREPARE AN IMPARTIAL ANALYSIS)

WHEREAS, California Revenue and Taxation Code Section 7285.5, authorizes the Board of Supervisors to approve an ordinance imposing a special Transactions and Use Tax (“Sales Tax”) for the purpose of augmenting revenues for designated purposes if approved by two-thirds (2/3) of the qualified voters voting thereon in an election on the issue; and

WHEREAS, the Board of Supervisors desires to place a ballot measure before the voters at the November 5, 2024 statewide general election to consider the adoption of a limited term special Sales Tax at the rate of 0.75 percent on the sale of all tangible personal property sold at retail in the unincorporated areas of Amador County, and

WHEREAS, the Sales Tax will will expire automatically after 10 years, unless extended by voters, and the revenue shall be used only for the maintenance, repair, and improvement of county streets, roads, and highways in accordance with the Expenditure Plan set forth in in the proposed Ordinance attached as Exhibit A and incorporated herein, and

WHEREAS, it is desirable that the election on the Sales Tax ballot measure be consolidated with the statewide general election to be held on November 5, 2024;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of Amador, State of California as follows:

SECTION 1. Pursuant to the requirements of Revenue and Taxation Code Section 7285.5, and Elections Code Section 9140, an election is hereby called for the unincorporated area of the County on the following ballot measure to enact an ordinance establishing a transactions and use tax, and the ballot forms shall substantially have printed on them the following words as a yes or no question:

Unincorporated County Sales Tax for Roads.

Shall an ordinance be adopted authorizing a 3/4-cent (0.75%) sales tax on retail transactions in the unincorporated area of the County for a ten-year period, providing approximately \$ 3.4 Million annually to be used solely for the repair, maintenance and improvement of local county roads?

SECTION 2. The full text of the ordinance entitled “An Ordinance of the County of Amador Imposing a Transaction and Use Tax to be Administered by the California Department of Tax and Fee Administration and Adding Chapter 3.15 to the Amador County Code” is attached hereto as Exhibit A and is approved for submission to the voters as required by Revenue and Taxation Code section 7285.5. If two-thirds of the qualified voters voting on the Ordinance vote in favor thereof, the Ordinance shall be deemed adopted and shall be effective in accordance with its terms.

SECTION 3. The election on this ballot measure shall be consolidated with the statewide general election to be held on November 5, 2024 and the County Registrar of Voters is directed to take any and all necessary steps to conduct the consolidated election.

SECTION 4. Arguments in favor of and in opposition to the ballot measure and rebuttal arguments shall be permitted. The County hereby adopts the provisions of Elections Code sections 9161 through 9167 regarding the acceptance of arguments relating to ballot measures.

SECTION 5. The County Counsel is directed to prepare an impartial analysis of the measure pursuant to Elections Code section 9160(b).

SECTION 6. The Board of Supervisors hereby finds and determines that the Sales Tax measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, section 15378(b)(5). Each individual project that is to be undertaken pursuant to the Ordinance and the Expenditure Plan will be subject to environmental review pursuant to the California Environmental Quality Act and all other applicable laws prior to project approval.

The foregoing resolution was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 25th day of June 2024, by the following vote:

AYES: Patrick Crew, Frank Axe, Richard Forster, Jeff Brown

NOES: None

ABSENT: Brian Oneto



Patrick Crew, Vice Chairman, Board of Supervisors

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California



EXHIBIT A

AN ORDINANCE OF THE COUNTY OF AMADOR
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION AND ADDING CHAPTER 3.15 TO THE AMADOR COUNTY CODE

The People of the County of Amador do ordain as follows:

SECTION 1. The Amador County Code is hereby amended by adding this Chapter 3.15, which shall read as follows:

“3.15.010. Title and Effect. This ordinance shall be known as the Amador County Roads Transactions and Use Tax Ordinance. The County of Amador, hereinafter shall be called “County” or “District.” This ordinance shall be applicable in the *unincorporated* territory of the County.

3.15.020. 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 as set forth below.

3.15.030. 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 7285.5 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance which shall be operative if a (2/3) 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.

3.15.040. Expenditure Plan. The proceeds of the Amador County Roads Transaction and Use Tax, net of the amount of fees paid to the California Department of Tax and Fee Administration (CDTFA), shall be spent solely for carrying out maintenance, repair, and improvement of county streets, roads, and highways as determined from time to time by the Board of Supervisors at an open and public meeting. Allowable expenditures related to these activities include, but are not limited to, planning, environmental review, engineering and design, related right of-way acquisition, construction, project management, and administration.

3.15.050 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.

3.15.060. Transaction and Tax Rate. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the *unincorporated* territory of the District at the rate of 0.75 % 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.

3.15.070. 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.

3.15.080. Use Tax Rate. An excise tax is hereby imposed on the storage, use or other consumption in the District 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 0.75 % 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.

3.15.090. 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.

3.15.100. 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 "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.

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.

3.15.110. 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.

3.15.120. 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.

3.15.130. 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.

3.15.140. 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.

3.15.150. 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.

3.15.160. Effective Date. This ordinance relates to the levying and collecting of the District transactions and use taxes and shall take effect immediately.

3.15.170. Termination Date. The authority to levy the tax imposed by this ordinance shall expire automatically 10 years from the Operative Date, unless extended by voters pursuant to Revenue and Taxation Code section 7285.5.

Approved by the Board of Supervisors of the County of Amador, State of California, on June 25, 2024, by the following vote:

AYES: Patrick Crew, Frank Axe, Richard Foster, Jeff Brown

NOES: None

ABSENT: Brian Oneto



Chairperson, Amador County Board of Supervisors

Attest:



(Signature)

Clerk of the Board of Supervisors
(Title)