



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

H-1

For the meeting of: July 15, 2014

Date: July 9, 2014

To: Board of Supervisors

From: Phillip Smith-Hanes, County Administrative Officer *PSH*

Subject: Ballot Measure Statement and Ordinance Relating to the Imposition of a Transactions and Use Tax to Be Administered by the State Board of Equalization

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the attached ballot measure statement (Attachment 1) for a local revenue measure to be placed before the voters of Humboldt County on November 4, 2014;
2. Introduce the attached Ordinance by title (Attachment 2), adding Chapter 8, Division 1 of Title VII to the Humboldt County Code, and waive the first reading;
3. Set the Ordinance for adoption on July 22, 2014;
4. Direct the Clerk of the Board to publish the pre-adoption summary of the Ordinance (Attachment 3), and to post a certified copy of the full text of the proposed Ordinance in the office of the Clerk of the Board, both publication and posting to be done at least five (5) days prior to the Board meeting at which the Ordinance will be adopted. [Government Code Section 25124 (b)(1)]; and

Prepared by Phillip Smith-Hanes

CAO Approval *[Signature]*

REVIEW:

Auditor \_\_\_\_\_ County Counsel WBC Human Resources \_\_\_\_\_ Other \_\_\_\_\_

TYPE OF ITEM:

Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. H-1

Meeting of: 7/8/14

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

Ayes *Sundberg, Lovelace, Bohn, Fennel, Bass*  
 Nays \_\_\_\_\_  
 Abstain \_\_\_\_\_  
 Absent \_\_\_\_\_

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: July 15, 2014  
 By: *[Signature]*  
 Kathy Hayes, Clerk of the Board

5. Direct the Clerk of the Board, within 15 days after adoption of the Ordinance, to publish a post-adoption summary of the ordinance (Attachment 4) with the names of the Supervisors voting for and against the Ordinance, and to post in the office of the Clerk of the Board a certified copy of the full text of the adopted Ordinance and amendments along with the names of those Supervisors voting for and against the Ordinance [Government Code Section 25124 (b)(1)].

SOURCE OF FUNDING: General Fund

DISCUSSION:

On July 8, your Board received a presentation on the results of polling that had been done (pursuant to prior Board direction) on two possible local revenue measures. At that time, your Board voted to “direct staff to return on July 15 with ordinance language to place a general-purpose local revenue measure on the ballot for November 4, 2014, as follows: a local sales tax at a rate of 0.5 percent levied throughout the County, with a five-year sunset clause and including an advisory committee on expenditure of funds derived from the tax imposed by the measure on resolution of the Board of Supervisors.” The proposed Ordinance before the Board today (Attachment 1) complies with this Board direction. Staff also recommends that your Board formally approve the language for a ballot measure, which is included as Attachment 1.

FINANCIAL IMPACT:

There is minimal financial impact to the recommended action. Costs for publication are included within existing budget appropriations.

OTHER AGENCY INVOLVEMENT: None.

ALTERNATIVES TO STAFF RECOMMENDATIONS: Board discretion.

ATTACHMENTS:

1. Ballot Measure Statement
2. Draft Ordinance
3. Pre-Adoption Summary
4. Post-Adoption Summary

Attachment 1

<b>MEASURE ____, Humboldt County Public Safety/Essential Services Measure.</b> To maintain/improve essential services, such as 24-hour sheriff's patrols; 9-1-1 emergency response; crime investigation/prosecution; drug/illegal marijuana growhouse enforcement/prevention; services for abused children/mentally ill; rural fire protection; road repairs; and other County services, shall County of Humboldt pursuant to County Ordinance No. _____ enact a 1/2% sales tax, for five years, all revenue for the County, none for the State of California, with annual audits and public review?	YES	
	NO	

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT ADDING CHAPTER 8, DIVISION 1 OF TITLE VII TO THE HUMBOLDT COUNTY CODE RELATING TO THE IMPOSITION OF A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Sections 718-1 through 718-18 of Chapter 8 of Division 1 of Title VII are hereby added as shown on the attached pages.

SECTION 2. This ordinance relates to the levying and collecting of County transactions and use taxes and shall take effect immediately from the date of its passage. This tax ordinance shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election held on November 4, 2014, pursuant to Revenue and Taxation Code Section 7285 and Government Code Section 53723. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

AYES: Supervisors--  
NOES: Supervisors--  
ABSENT: Supervisors--

\_\_\_\_\_  
Chair of the Board of Supervisors of the  
County of Humboldt, State of California

Attachment 2

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors  
County of Humboldt

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**Chapter 8 - Transactions and Use Tax to be Administered by the State Board of Equalization**

- § 718-1. Title.
- § 718-2. Operative Date.
- § 718-3. Purpose.
- § 718-4. Contract with State.
- § 718-5. Transactions Tax Rate.
- § 718-6. Place of Sale.
- § 718-7. Use Tax Rate.
- § 718-8. Adoption of Provisions of State Law.
- § 718-9. Limitations on Adoption of State Law and Collection of Use Taxes.
- § 718-10. Permit Not Required.
- § 718-11. Exemptions and Exclusions.
- § 718-12. Amendments.
- § 718-13. Enjoining Collection Forbidden.
- § 718-14. Severability.
- § 718-15. Effective Date.
- § 718-16. Termination Date.
- § 718-17. Advisory Committee.
- § 718-18. Compliance with the California Environmental Quality Control Act (CEQA).

TITLE VII - FINANCE, REVENUE AND TAXATION

DIVISION 1

REVENUE AND TAXATION

CHAPTER 8

TRANSACTIONS AND USE TAX TO BE ADMINISTERED  
BY THE STATE BOARD OF EQUALIZATION

718-1. TITLE.

This ordinance shall be known as the Humboldt County Transactions and Use Tax Ordinance. The County of Humboldt hereinafter shall be called "County". This ordinance shall be applicable in the incorporated and unincorporated territory of the County. (Ord. , \$ , / /2014)

718-2. 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. (Ord. , \$ , / /2014)

718-3. 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. (Ord. , \$ , / /2014)

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 by a 2/3 vote of the Board of Supervisors 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 held pursuant to Revenue and Taxation Code Section 7285 and Government Code Section 53723. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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 State Board of Equalization 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 State Board of Equalization in administering and collecting the California State Sales and Use Taxes. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

**718-4. CONTRACT WITH STATE.**

Prior to the operative date, the County shall contract with the State Board of Equalization 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 State Board of Equalization 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. (Ord. , \$ , / /2014)

**718-5. 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 0.5% 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. (Ord. , \$ , / /2014)

**718-6. 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 or her 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 State Board of Equalization. (Ord. , \$ , / /2014)

**718-7. 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 0.5% 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. (Ord. , \$ , / /2014)

**718-8. 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. (Ord. , \$ , / /2014)

**718-9. 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: (Ord. , \$ , / /2014)

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: (Ord. , \$ , / /2014)

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California; (Ord. , \$ , / /2014)

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 State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance. (Ord. , \$ , / /2014)

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: (Ord. , \$ , / /2014)

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; (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

**718-10. 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. (Ord. , \$ , / /2014)

**718-11. EXEMPTIONS AND EXCLUSIONS.**

A. There shall be excluded from the measure of the transactions tax and 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. (Ord. , \$ , / /2014)

B. There are exempted from the computation of the amount of transactions tax the gross receipts from: (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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 or her 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: (Ord. , \$ , / /2014)

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 (Ord. , \$ , / /2014)

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. Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

5. For the purposes of subsections (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. (Ord. , \$ , / /2014)

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: (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

5. For the purposes of subsections (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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

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. (Ord. , \$ , / /2014)

**718-12. 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. (Ord. , \$ , / /2014)

**718-13. 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. (Ord. , \$ , / /2014)

**718-14. 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. (Ord. , \$ , / /2014)

**718-15. EFFECTIVE DATE.**

This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately. (Ord. , \$ , / /2014)

**718-16. TERMINATION DATE.**

This ordinance will terminate on March 31, 2020. (Ord. , \$ , / /2014)

**718-17. ADVISORY COMMITTEE.**

The Board of Supervisors shall, no later than March 1, 2015, establish by resolution an advisory committee that will make recommendations to the Board of Supervisors as to expenditure of funds derived from this tax. (Ord. , \$ , / /2014)

**718-18. COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY CONTROL ACT (CEQA).**

The purpose of this sales and use tax ordinance is to establish a government funding mechanism for general County purposes and the County is not committing to a course of action with respect to the tax revenue and therefore the ordinance is not a "project" subject to CEQA as defined in Section 15378, subdivision (b) (4), of the CEQA Guidelines. (Ord. , \$ , / /2014)

**SUMMARY FOR PUBLICATION PRIOR TO ADOPTION OF ORDINANCE**

(The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted.)

**SUMMARY**

On July 22, 2014, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance adding Sections 718-1 through 718-18 of Chapter 8 to Division 1 of Title VII of the Humboldt County Code, relating to the Imposition of a Transactions and Use Tax to be Administered by the State Board of Equalization. This tax ordinance shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election held on November 4, 2014, pursuant to Revenue and Taxation Code Section 7285 and Government Code Section 53723.

The text of the proposed ordinance is available from the Clerk of the Board, Room 111, 825 Fifth Street, Eureka, CA.

**SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE**

(The summary shall be published within fifteen (15) days after the adoption of the ordinance.)

**SUMMARY**

On July 22, 2014, the Humboldt County Board of Supervisors adopted Ordinance No. \_\_\_\_\_, adding Sections 718-1 through 718-18 of Chapter 8 to Division 1 of Title VII of the Humboldt County Code, relating to the Imposition of a Transactions and Use Tax to be Administered by the State Board of Equalization. This tax ordinance shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election held on November 4, 2014, pursuant to Revenue and Taxation Code Section 7285 and Government Code Section 53723.

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors.

The votes were:

AYES:

NOES:

ABSENT: