

SALES TAX EFFORTS Draft

BACKGROUND

Timeline

1976 – The legislature created LACTC and authorized LACTC to adopt a “retail and transaction tax” by a majority of voters (PUC 130350-130355).

1978 – Voters passed Proposition 13 amending the state constitution to require two thirds voter threshold to impose special taxes (Cal.Const., art. XIII A).

1981 – George Richmond vs. LACTC (1981)

The Los Angeles County Transportation Commission (LACTC) filed a petition to require its Executive Director, George Richmond, to implement a retail transaction and use tax approved by the majority (54%) of voters but less than the two thirds as cited in section 4 of article XIII A of the California Constitution (Proposition 13) that was approved by voters in 1978. The California Supreme Court found that Proposition 13 requiring a two-thirds vote of the electorate of “special districts” to authorize the imposition of “special taxes” on such districts applied only to “special districts” that were empowered to levy property taxes.

1986 – Proposition 62 (Gov. 53722.) is approved by voters and required that all new local taxes be approved by a vote of the local electorate by a two-thirds vote. Proposition 62 also defined “special” and “general” taxes which provided that “All taxes are either special taxes or general taxes. General taxes are taxes imposed for general governmental purposes. Special taxes are taxes imposed for specific purposes.”

1987 – Local Transportation Authority & Improvement Act (Dedda legislation or PUC 180201.) authorized the board of supervisors of any county to create a “local transportation authority” composed of elected officials of local governmental agencies. The Act then empowered each such authority to adopt an ordinance imposing a sales tax on a countywide basis at a rate not to exceed 1%, provided the ordinance is submitted to the voters and approved by a majority of those voting. The Act further required the authority to adopt a “county transportation expenditure plan” approved by the board of supervisors and a majority of the city councils of the county. Finally, the Act empowered the authority, for the purpose of financing any planned capital expenditures, to issue revenue bonds payable from the proceeds of the tax, provided the voters also approved the issuance of such bonds. In the alternative, the board of supervisors could designate an existing local transportation agency as such an authority.

1995 - Santa Clara County Local Transportation Authority vs. Guardino (Howard Jarvis Taxpayers' Ass'n) (1995)

After a ballot measure proposing a sales tax for the county transportation authority received affirmative vote from 54.1% of voters, opposing interests to the measure filed action in superior court challenging its validity. In light of the pending suit, the auditor-controller of transportation authority refused to sign limited tax bonds until sales tax was determined to be valid. The authority then petitioned for preemptory writ of mandate directed to the auditor-controller to command him to the sign bonds. The Court of Appeal denied the petition. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court held that: (1) a sales tax imposed by the authority to fund enumerated public transportation projects was a "special tax" within the meaning of Proposition 62 requiring that local special taxes be approved by two-thirds vote of the electorate; (2) the authority was a "special district" within the meaning of Proposition 62; (3) Proposition 62 applied to all "districts"; and (4) Proposition 62 was constitutional and, therefore, the sales tax was invalid since it was not approved by two-thirds vote of the local electorate.

2003 – Murray bill enacted. The bill includes a project list, a 6 1/2 year sunset and an exemption to the sales tax cap (PUC 130350.5).

2003 – SB 566 (Scott) enacted which stipulates that the combined rate of transactions and use tax in any county may not exceed 2% (Rev. & Tax 7251.1, 7285. and 7285.5). The bill also outlines a process to impose a sales tax by requiring a two-thirds vote of the board of supervisors and a two-thirds vote of the electorate. Originally, this measure limited the new capacity for public safety measures. That restriction was subsequently removed from the legislation and the bill raised the cap.

DISCUSSION

There are three, possibly four, options for pursuing a countywide sales tax initiative.

OPTION A:

Metro could move forward with our existing authorization provided by PUC 130350 and Rev. & Tax. 7251. This original authorization allows for majority voter approval. Metro would need clarification to determine if the Guardino decision supersedes our existing authority as it relates to voter threshold. This option would also be impacted by the tax cap restriction in Rev. & Tax. Code 7251.1. We believe the two thirds vote requirement preclude this option.

OPTION B:

Metro could pursue revising SB 314 (Murray) which provided the authorization to impose, a transactions and use tax at the rate of 0.5% for 6 1/2 years or less, for

the funding of specific transportation-related purposes designated as capital projects or capital programs. The bill exempts the application of the sales tax toward the tax cap restriction.

OPTION B.1:

Amend the Murray bill in January to increase the duration of the tax and convert the project list to a categorical program. Secure passage of the lower vote threshold in the budget process so that it can be placed on the November ballot. Ensure the vote threshold measure has language that allows the lower vote threshold to apply to any measure on the same ballot.

OPTION C:

Metro could pursue authority from PUC 180201

OPTION D:

Can Metro ask the Board of Supervisors to place a sales tax initiative on the ballot?

Questions

1. Are we near the cap on sales tax and what recourse is available to address it? SB 566 raised the cap from 1.5 % to 2%. If we are not impacted by the cap, what is the process to put an sales tax on the ballot? If we use PUC 180201. Are we limited by the 1% rate cap in PUC 180202. *The Murray bill provides for an exemption to the cap in Rev. & Tax. 7251 and is a process independent of PUC 180202.*
2. Are we "Evergreened" meaning are we limited to a 20 year tax? *Yes we are subject to the 20 year limit unless there is statutory exemption which could be done in an amended Murray bill.*
3. Do we need to have an expenditure plan and how specific does it need to be? *Yes we are required to have an expenditure plan, except that the Murray bill can change that*
4. Which mechanism establishes the vote threshold? Does the Richmond decision still stand meaning can we assert that a lower threshold applies to our new tax? *Prop 62 and Gaurdino now control.*
5. Do later decisions/actions such as Guardino prevent us from operating under the Richmond decision? *Yes.*

6. If we are able to utilize Option D are we restricted by the cap? Would we then have to operate under the Deddah provisions?
7. Does the lower vote threshold have to be a constitutional amendment?
Yes, lowering vote threshold has to be a constitutional amendment to avoid litigating the issue of whether it is a "special tax" under Prop. 13. (The Supreme Court has held a tax to a narrow agency unconstitutional under Prop 13, irrespective of Prop 62 (Rider v. County of San Diego (1991)). Prop 62 could be changed by a statutory amendment placed on the ballot by a majority vote, but that would not impact Prop. 13.
8. Has there been another constitutional amendment that applied its provisions, such as a lower vote threshold, to another measure on the same ballot? (Can we link the statewide vote on a lower threshold to a sales tax measure on the same ballot?) *It is possible to apply a changed vote threshold to measures voted on the same ballot. Proposition 39 lowered the vote threshold on taxes for school bonds to 55%, applicable to elections "on or after the effective date" of the measure, meaning that school bonds on the same ballot qualified for the 55% threshold.*

RECOMMENDATION

Metro staff recommends further analysis from County Counsel on the legal issues surrounding potential sales tax mechanisms.