

CHAPTER 3.10

SPECIAL PURPOSE TRANSACTIONS AND USE TAX

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3.10.005 TITLE.

This chapter shall be known as the “special purpose transactions and use tax” ordinance.

(Ord. 907, § 1, passed 09-23-2013)

3.10.010 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning:

STREET. Includes all streets, highways, avenues, lanes, alleys, courts, or curbs in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

(Ord. 907, § 1, passed 09-23-2013)

3.10.015 PURPOSE.

The ordinance codified herein is adopted to achieve the following (and other) purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a special 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 7285.91 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if 2/3 of the electors voting on the ordinance vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a special 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 special 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 practical 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.

D. To adopt a special retail transactions and use tax ordinance that can be administered in a manner that will, to the degree possible consistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the said Revenue and Taxation Code, minimize the cost of collecting City transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

E. To provide a source of revenue for repairing, maintaining and reconstructing City streets. The revenue generated by the tax provided for herein shall be restricted to those uses. The tax is, therefore, a special tax.

(Ord. 907, § 1, passed 09-23-2013)

3.10.020 USE OF OTHER FUNDING SOURCES.

The City will continue to pursue and utilize alternate sources of funding, in addition to sales tax dollars, to complete repair, maintenance and reconstruction of City streets.

(Ord. 907, § 1, passed 09-23-2013)

3.10.025 OPERATIVE DATES.

This chapter shall be operative on January 1, 2015, and shall expire on December 31, 2024, unless an extension or re-authorization of this chapter is approved by the voters of the City at an election called for that purpose.

(Ord. 907, § 1, passed 09-23-2013)

3.10.030 CONTRACT WITH STATE.

Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incident to the administration and operation hereof. If the City has not 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. The Council may make any technical amendments to this chapter required by the State Board of Equalization, except for any changes affecting the tax rate, its manner of collection, or the purpose for which the revenue from the tax may be used.

(Ord. 907, § 1, passed 09-23-2013)

3.10.040 IMPOSITION OF SPECIAL TRANSACTIONS TAX.

For the privilege of selling tangible personal property at retail, a special tax is hereby imposed upon all retailers in the City at the rate of 0.5% of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City of Fort Bragg on and after the operative date of this chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.050 PRESUMPTION AS TO PLACE OF SALES.

For the purposes of this chapter, 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 Board of Equalization.

(Ord. 907, § 1, passed 09-23-2013)

3.10.060 IMPOSITION OF SPECIAL USE TAX.

An excise tax is hereby imposed on the storage, use, or other consumption in the City of Fort Bragg of tangible personal property purchased from any retailer on or after the operative date of this chapter, at the rate of 0.5% of the sales price of the property subject to the tax. 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. 907, § 1, passed 09-23-2013)

3.10.070 ADOPTION OF CERTAIN SECTIONS OF CALIFORNIA REVENUE AND TAXATION CODE BY REFERENCE.

Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 of Division 2 of said code, as amended and in force and effect on the operative date of this chapter, applicable to use taxes are hereby adopted and made a part of § 3.10.010 et seq., as though fully set forth herein.

(Ord. 907, § 1, passed 09-23-2013)

3.10.080 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 City 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 Board of Control, State Board of Equalization, 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 City 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 chapter.

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 Section 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word “City” 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. 907, § 1, passed 09-23-2013)

3.10.090 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 chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.100 EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the special transactions tax and the special 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 special 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 City which is shipped to a point outside the City, 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 subsection, delivery to a point outside the City 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 Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City 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-City 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 chapter.

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 chapter.

5. For the purposes of subsections (B)(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 special use tax imposed by this chapter the storage, use or other consumption in this City 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 chapter.

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 chapter.

5. For the purposes of subsections (C)(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 subsection (C)(7) of this section, a retailer engaged in business in the City 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 City or participates within the City 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 City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" 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 Chapter 2 of 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 City.

D. Any person subject to special use tax under this chapter may credit against that tax any transactions tax or reimbursement for transaction 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.

(Ord. 907, § 1, passed 09-23-2013)

3.10.120 AMENDMENTS.

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code made subsequent to the operative date of this chapter relating to sales and use taxes and which are not inconsistent with Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this chapter; provided, however, that no such amendment shall operate so as to affect the rate of tax imposed by this chapter.

(Ord. 907, § 1, passed 09-23-2013)

3.10.130 ENJOINING COLLECTION PROHIBITED.

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 this City, or against any officer of the state or the City, to prevent or enjoin the collection hereunder, or Parts 1.6 and 1.7 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

(Ord. 907, § 1, passed 09-23-2013)

3.10.140 USE OF TAX PROCEEDS AND EXPENDITURE PLAN.

All proceeds of the tax levied and imposed hereunder shall be accounted for and paid into a special fund or account designated for use for street repair, maintenance and reconstruction only, including related expenses as are deemed necessary by the City Council for the benefit of the residents of the City. Because the proceeds of the tax shall be used only for repairing, maintaining and reconstructing City streets, this section shall satisfy the expenditure plan requirement of Section 7285.91(c) of the Revenue and Taxation Code.

(Ord. 907, § 1, passed 09-23-2013)