

AN ORDINANCE ADDING ARTICLE VII TO CHAPTER 18 OF THE LAKE COUNTY
CODE IMPOSING A GENERAL TRANSACTIONS AND USE TAX OF ONE AND ONE-
HALF PERCENT IN THE UNINCORPORATED AREAS OF THE COUNTY TO BE
ADMINISTERED BY THE STATE BOARD OF EQUALIZATION

RECITALS

WHEREAS, the County of Lake faces considerable financial challenges after a series of six major disasters in less than a three year period which has decimated the County's fiscal reserves and drastically reduced its ongoing revenue streams; and

WHEREAS, to avoid significant reductions to County services, new revenues are needed to continue and to improve County services and to move forward with the economic development necessary for the County's future; and

WHEREAS, the results of forums with County residents and an opinion survey show strong support for an increase in sales tax to provide the revenue to the County's General Fund necessary to maintain and improve County services and needs.

NOW THEREFORE, the Board of Supervisors of the County of Lake, State of California, ordains as follows:

SECTION ONE: Article VII of Chapter 18 of the Lake County Code is hereby added to read as follows:

"Sec. 18-61. Title.

61.1. This Article shall be known as the Lake County 2018 Transactions and Use Tax Ordinance.

61.2. This Article shall be applicable throughout the unincorporated areas of Lake County, California (hereinafter, the "County").

61.3. This tax shall be in addition to any other taxes authorized by law, including any existing or future state or local sales tax.

Sec. 18-62. Purpose and Intent.

This ordinance is adopted to achieve the following, among other, purposes, and directs that its provisions are interpreted to accomplish those purposes:

- (a) To impose a retail and transactions 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 of the Revenue and Taxation Code, which authorizes the County to adopt this tax ordinance, which shall become operative if a majority of the qualified voters 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 consistent 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 for it that the State Board of Equalization can administer and collect 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 Sales and Use Taxes.
- (d) To adopt a retail transactions and use tax ordinance which can be administered in a manner that shall 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 recordkeeping upon persons subject to taxation under the provisions of this ordinance.

(e) To raise the appropriations limit for the County.

Sec. 18-63. Use of the Taxes.

The tax imposed by this Ordinance is a general tax within the meaning of article XIII C, section 1(a) of the California Constitution. The revenue generated by this general tax is available for general governmental purposes and shall be paid into the General Fund for use by the County.

Sec. 18-64. Increase of Appropriations Limit.

The appropriations limit of the County shall be increased by the amount of the revenue anticipated to be collected by the County from the transactions and use tax to allow spending of the tax revenue for the period allowed by law.

Section 18-65. Operative Date.

This Ordinance relates to the levying and collecting of the County's transactions and use taxes and shall become operative on the first day of the first calendar quarter commencing more than 110 days after its adoption.

Section 18-66. Oversight Committee and Annual Audit.

The Board of Supervisors shall establish by resolution an Oversight Committee to provide transparency and ensure fiscal accountability of these tax monies. The funds collected from this transactions and use tax ordinance shall be accounted for and included in the annual audit of the County's financial operations.

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Sec. 18-67. Contract with the State.

Prior to the operative date, the County shall contract with the California State Board of Equalization to perform all functions incident to the administration and operation of this Article; 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.

Sec. 18-68. Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the unincorporated areas of Lake County at the rate of one and one-half percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said areas on and after the operative date of this Article.

Sec. 18-69. Place of Sale.

69.1. For purposes of this Article, 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.

69.2. In the event a retailer has no permanent place of business in the state of California 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.

Sec. 18-70. Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the unincorporated area of Lake County of tangible personal property purchased from any retailer on and after the operative date of this Article for storage, use or other consumption in said territory at the rate of one and one-half percent 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.

Sec. 18-71. Incorporation of Provisions of State Law.

Except as otherwise provided in this Article and except insofar as any provisions of this Article may be inconsistent with Part 1.6 of Division 2 of the California Revenue and Taxation Code, all of the provisions of Part 1 (commencing at Section 6001) of Division 2 of the California Revenue and Taxation Code are hereby adopted and made a part of this Article as though fully set forth herein.

Sec. 18-72. Limitations on Adoption of State Law and Collection of Use Taxes.

The following requirements shall be followed in applying the provisions of Part 1 of Division 2 of the California Revenue and Taxation Code to this Article:

72.1. Wherever the state of California is named or referred to as the taxing agency, the name of this County shall be substituted therefor. However, said substitution shall not be made when:

- a. 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;

b. 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 functions incident to the administration or operation of this Article;

c. In those sections, including but not limited to sections referring to the exterior boundaries of the state of California, where the result of the substitution would be to:

1. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property that 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

2. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property that would not be subject to tax by the state of California under the said provision of that code.

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

72.2. 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 of the California Revenue and Taxation Code.

Sec. 18-73. Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the California Revenue and Taxation Code, an additional transactor's permit shall not be required by this Article.

Sec. 18-74. Exemptions and Exclusions.

74.1. In addition to any other exemption or exclusion required by law, 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.

74.2. There are exempted from computation of the amount of transactions tax imposed by this Article, gross receipts from:

a. The sale 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;

b. The sale 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 subsection, delivery to a point outside the county shall be satisfied:

1. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the California Vehicle Code, aircraft licensed in compliance with Section 21411 of the California Public Utilities Code and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the California Vehicle Code; by a combination of registration to an out-of-county address and 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

2. With respect to commercial vehicles, by a combination of 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.

c. 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 Article.

d. The lease of tangible personal property that constitutes a continuing sale of such property for any period of time for which the lessor is obligated to lease the property for an amount that was fixed by a lease executed prior to the operative date of this Article;
and

e. For the purposes of subsections 74.2(c) and (d), 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, regardless of whether such right is exercised.

74.3. There are exempted from computation of the amount of the use tax imposed by this Article, gross receipts from the following storage, use or other consumption of tangible personal property:

a. Any sale that has been subject to a transactions tax under any state-administered transactions and use tax ordinance;

b. The sale of 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 set forth in Sections 6366 and 6366.1 of the California Revenue and Taxation Code;

c. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract that was entered into prior to the operative date of this Article;

d. If the possession of or the exercise of any right or power over the tangible personal property shall arise under a lease that constitutes 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 that was executed prior to the operative date of this Article;

e. For the purposes of subsections 74.3(c) and (d), the storage, use, or other consumption or the 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, regardless of whether such right is exercised;

f. Except as provided in subsection 74.3(g), a retailer engaged in business in Lake 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 Lake County or participates within Lake 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 Lake County or through any representative, agent, canvasser, solicitor, subsidiary or person in Lake County under the authority of the retailer; and

g. "retailer engaged in business in Lake 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 California Vehicle Code, aircraft licensed in compliance with Section 21411 of the California Public Utilities Code and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the California Vehicle Code. The retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle or aircraft at an address in Lake County.

Sec. 74.4. Any person subject to use tax under this Article may credit the amount of such tax against any transactions tax paid to a county or district imposing or a retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the California Revenue and Taxation Code with respect to the sale of property or the storage, use or other consumption of which is subject to the use tax.

Sec. 18-75. Amendment of State Law.

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

Sec. 18-76 Enjoining of 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 Article or Part 1.6 of Division 2 of the California Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Sec. 18-77. Severability.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of the Article and the application of such provision to other persons or circumstances shall not be affected thereby.

Sec. 18-78. Savings Clause.

This Article shall not be interpreted in any manner that conflicts with the laws or constitutions of the United States or the state of California.

Sec. 18-79. Termination of Transactions and Use Tax.

The authority to levy the tax imposed by this Ordinance shall expire ten (10) years from the operative date, unless extended by the voters in the manner set forth in Revenue and Taxation Code section 7285.

Sec. 18-80. Implementation Subsequent to Vote.

Upon approval of this Ordinance by a majority of the voters, the County may adopt policies and take such actions as may be necessary for the implementation of the one and one-half of one percent (1.50%) transactions and use tax authorized by this Ordinance. Such actions shall include, but shall not be limited to, the County amending this Ordinance without being required to secure a ratification by the electorate to provide for use of additional federal, state, or local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances, or, if such amendments are deemed necessary and recommendation by the County's general counsel or by the legal counsel

for the State Board of Equalization. However, no amendment shall increase the rate of the transactions and use tax or extend the terms beyond ten (10) years without securing the approval of the amendment by the legally required percentage of qualified voters voting on the amendment."

SECTION TWO: Election. An election on the issue of levying a transactions and use tax pursuant to this ordinance shall be held together with the statewide general election on June 5, 2018.

SECTION THREE: California Environmental Quality Act (CEQA). Under CEQA Guidelines section 15378(b)(4), adoption of this Ordinance is not a project subject to the requirements of CEQA.

SECTION FOUR: This ordinance shall be published once within fifteen (15) days after its passage in a newspaper of general circulation in the County of Lake.

The foregoing Ordinance was introduced before the Board of Supervisors and passed on by the following vote of the _____ day of _____, 2018.

AYES:

NOES:

ABSENT OR NOT VOTING:

COUNTY OF LAKE

Chair, Board of Supervisors

ATTEST:

Carol J. Huchingson
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

Anita L. Grant
County Counsel

By: _____

By: _____