

DEPARTMENT: County Counsel BY: Thomas P. Guarino

2nd 6/18/04 CIA-7
PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

5/25 Waive first reading and introduce Ordinance 6/8 Waive second reading and adopt Ordinance increasing the Transaction and Use Tax by 1/4 of 1% for the benefit of the Mariposa County Unified School District for a period not to exceed four years and placing the Ordinance before the electorate of Mariposa County and approve the Indemnity Agreement between the Mariposa County Unified School District and Mariposa County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board approved this same type of Ordinance for the School District in the Fall of 2003. However, the voters of Mariposa County did not approve a 1/4 of 1% increase of the Transaction and Use Tax for the benefit of the Mariposa County Unified School District on March 2, 2004 and therefore the School District is requesting that the Board adopt another Ordinance to allow them to place the measure back on for the November 2004 ballot.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes () No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		Proposed Ordinance
Source:		Indemnity Agreement
Internal Transfer		
Unanticipated Revenue	4/5's vote	
Transfer Between Funds	4/5's vote	
Contingency	4/5's vote	
() General () Other		

5/25 CLERK'S USE ONLY: 48
Res. No.: 04-232 Ord. No. 1008
Vote - Ayes: _____ Noes: _____
Absent: _____
() Approved
(x) Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:
 Requested Action Recommended
 No Opinion
Comments:

CAO: Pelt

The foregoing instrument is a correct copy of the original on file in this office.
Date: _____
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

GARRY R. PARKER, CHAIR
DOUG BALMAIN, VICE-CHAIR
LEE STETSON
BOB PICKARD
JANET BIBBY

DISTRICT IV
DISTRICT II
DISTRICT I
DISTRICT V
DISTRICT III



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: TOM GUARINO, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: INTRODUCTION OF AN ORDINANCE INCREASING THE TRANSACTION AND USE
TAX BY ONE-QUARTER (1/4) OF ONE-PERCENT (1%) FOR MARIPOSA COUNTY
UNIFIED SCHOOL DISTRICT
Resolution No. 04-232

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on May 25, 2004

ACTION AND VOTE:

Tom Guarino, County Counsel;

B) PUBLIC HEARING to Waive First Reading and Introduce an Ordinance Increasing the Transaction and Use Tax by One-Quarter (1/4) of One Percent (1%) for the Benefit of the Mariposa County Unified School District for a Period Not to Exceed Four Years and Placing the Ordinance Before the Electorate of Mariposa County and Approve the Indemnity Agreement Between the Mariposa County Unified School District and Mariposa County

BOARD ACTION: The public portion of the hearing was opened and input was provided by the following:

Patrick Holland, Superintendent of the Mariposa County Unified School District, thanked the Board for placing this item on the agenda, and he thanked County Counsel for his assistance with this matter. He provided statistical information on the need for the bus system and on the status of the bus fleet.

The public portion of the hearing was closed and the Board commenced with deliberations. Tom Guarino responded to a question from the Board as to whether the Ordinance and Indemnity Agreement meet the requirements and have his recommendation for approval. (M)Pickard, (S)Stetson, first reading was waived and the Ordinance was introduced as recommended; and Res. 04-232 was adopted approving the Indemnity Agreement. The Clerk of the Board read the title of the Ordinance into the record. Ayes: Unanimous. The hearing was closed.

cc: Mary Hodson, Deputy County Administrative Officer
Ken Hawkins, Auditor
Marjorie Wass, County Clerk
Patrick Holland, Mariposa County Unified School District
File

MARIPOSA COUNTY ORDINANCE NO. 1008

AN ORDINANCE OF THE MARIPOSA COUNTY BOARD OF SUPERVISORS

IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED

BY THE STATE BOARD OF EQUALIZATION

(NOT TO BE CODIFIED)

Section 1. TITLE. This ordinance shall be known as the Mariposa County Unified School District School Transactions and Use Tax Ordinance. The County of Mariposa hereinafter shall be called "County." This ordinance shall be applicable in the incorporated and unincorporated territory of the County.

Section 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.

Section 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:

A. To impose a retail transactions and use tax at the rate of one-quarter of one percent (1/4%) 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. Proceeds of the tax imposed by this ordinance shall be deposited into a fund established by the Mariposa County Auditor and after deducting the County Auditor's expenses shall be disbursed for the Mariposa County Unified School District and used for the following stated purposes: for payment of the costs of collection and administration of the transaction and use tax, augmentation of the revenues of the Mariposa County Unified School District for the replacement cost of purchasing new school buses.

C. 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.

D. 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.

E. 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.

Section 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.

Section 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 $\frac{1}{4}$ % 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.

Section 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 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.

Section 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 $\frac{1}{4}$ % 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.

Section 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.

Section 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:

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 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 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.

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 "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.

Section 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.

Section 11. 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 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 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:

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-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

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.

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 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.

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:

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 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.

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.

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 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 County.

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.

Section 12. COUNTY IMPLEMENTATION Upon approval of this ordinance by two-thirds or more of the voters, the County may adopt policies and take other actions, consistent with law, as may be necessary for the implementation of the one-quarter (1/4 %) transaction and use tax authorized by this ordinance.

Section 13. 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.

Section 14. 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.

Section 15. 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.

Section 16. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately.

Section 17. TERMINATION DATE. The authority to levy the tax imposed by this ordinance shall expire four years from the date of the effective date of this ordinance.

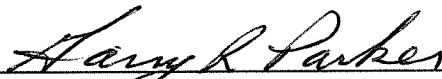
PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 8th day of June, 2004 by the following vote:

AYES: STETSON, BALMAIN, BIBBY, PARKER, PICKARD

NOES: NONE

ABSENT: NONE


ABSTAINED: NONE



GARRY R. PARKER, Chairman
Mariposa County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:



MARGIE WILLIAMS
Clerk of the Board



THOMAS P. GUARINO
County Counsel