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Chief Executive Officer

April 10, 2018

The Honorable Steve Glazer
California State Senate
State Capitol, Room 4072
Sacramento, California 95814

Subject: **SB 1466 (Glazer) – SUPPORT**

Dear Senator Glazer:

The Orange County Transportation Authority (OCTA) Board of Directors is pleased to support SB 1466, your legislation that will more equitably distribute revenues generated from the sale of tangible goods online under the Bradley-Burns Uniform Local Sales and Use Tax Law. This will be done by distributing these revenues based on the destination of the goods sold rather than the point-of-sale, consistent with a recommendation made by the State Auditor.

Last year, OCTA sponsored an audit request made by Assembly Member Daly (D-Anaheim) and Assembly Member Todd Gloria (D-San Diego) for the State Auditor to analyze the distribution and assessment of the Local Transportation Fund (LTF) for online sales. The LTF is imposed under the Bradley-Burns tax as part of the Transportation Development Act and serves as one of the primary funding sources for transit services statewide. OCTA sponsored the audit request after observing that the growth rates for LTF revenues, which have historically funded about 50 percent of OCTA's bus operations, were not keeping pace with local transportation sales taxes such as Measure M in Orange County.

On November 30, 2017, the State Auditor released an audit on "The Bradley-Burns Tax and Local Transportation Funds." Overall, the audit found the LTF revenue statewide has been steadily increasing, but some counties disproportionately benefit because of existing law, with counties which have more warehouses or distribution centers receiving more revenue. The audit's primary finding was that changing the allocation structure for Bradley-Burns taxes would result in a more equitable distribution of local transportation funding, primarily due to the "point-of-sale" assessment structure and the impact from an increase in internet sales. The audit recommended that the state amend the Bradley-Burns tax law to allocate revenues from internet sales the same way they are allocated for local sales tax measures, which is based on the destination of goods sold rather than their place of sale.

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Based on OCTA's most recent forecasts, OCTA is likely receiving about \$2-3 million less in LTF revenues annually. This directly impacts OCTA's ability to provide sustained transit operations throughout the county, considering that online sales are expected to dramatically increase in future years. This is the case, even though overall purchases from Orange County where the LTF can be assessed remain stable. If SB 1466 and SCA 20 are successful, OCTA will receive a more equitable share of LTF funding, and extreme fluctuations due to the expected increase in online sales will be mitigated.

A SUPPORT position is consistent with the OCTA 2017-2018 State Legislative Platform's principle to "support efforts to restore equity with regards to the generation and disbursement of sales tax revenues that support the Local Transportation Fund."

If you or your staff have any questions regarding OCTA's position on SB 1466, please contact Kristin Essner, Manager of State and Federal Relations, at (714) 560-5754 or kessner@octa.net.

Sincerely,



Lisa A. Bartlett
Chairwoman

LAB:ke

c: Darrell E. Johnson, Chief Executive Officer
Orange County State Legislative Delegation
Platinum Advisors, LLC

AMENDED IN SENATE MARCH 22, 2018

SENATE BILL

No. 1466

Introduced by Senator Glazer
(Coauthors: Senators Allen and Moorlach)

February 16, 2018

~~An act relating to taxation.~~ *An act to amend Section 7205 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as amended, Glazer. ~~Local sales taxes.~~ *Local sales taxes: online sales: place of delivery.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. Existing law requires the city tax rate to be credited against the county rate so that the combined rate does not exceed 1.25%. Existing law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit that tax to the city or county.

The Bradley-Burns Uniform Local Sales and Use Tax Law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified. Existing law provides that these local sales taxes are allocated to the place where the sale is deemed to take place.

This bill would instead provide that, in the case of a sale of tangible personal property by a qualified retailer, as defined, that is transacted online, the place at which the retail sale of that tangible personal

property is consummated for the purpose of a local sales tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law is the point of the delivery of that tangible personal property to the purchaser's address or any other address designated by the purchaser.

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. Existing law requires the city tax rate to be credited against the county rate so that the combined rate does not exceed 1.25%. Existing law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit that tax to the city or county.~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified. Existing law provides that these local sales taxes are allocated to the place where the sale is deemed to take place.~~

~~The California Constitution prohibits the Legislature from enacting a statute that would change the method of distributing revenues derived under the Bradley-Burns Uniform Local Sales and Use Tax Law, as that law read on November 3, 2004, except the Legislature may change that law by statute to allow the state to participate in an interstate compact or to comply with federal law.~~

~~*This bill would become operative only if Senate Constitutional Amendment ____ of the 2017–18 Regular Session is approved by the voters and, in that event, would become operative on January 1, 2020.*~~

~~This bill would state the intent of the Legislature to enact legislation that would provide that, in the case of certain sales of tangible personal property that are transacted online, the place at which the retail sale of that tangible personal property is consummated for the purpose of a local sales tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law is the point of the delivery of that tangible personal property. The bill would further state that it is the intent of the Legislature that such legislation would be effective only if a constitutional amendment that allows the Legislature to change the method of allocation under the Bradley-Burns Uniform Local Sales and Use Tax Law is approved by the voters.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 7205 of the Revenue and Taxation Code*
2 *is amended to read:*

3 7205. (a) For the purpose of a sales tax imposed by an
4 ordinance adopted pursuant to this part, all retail sales are
5 consummated at the place of business of the retailer unless the
6 tangible personal property sold is delivered by the retailer or his
7 or her agent to an out-of-state destination or to a common carrier
8 for delivery to an out-of-state destination. The gross receipts from
9 those sales shall include delivery charges, when those charges are
10 subject to the state sales and use tax, regardless of the place to
11 which delivery is made.

12 (b) (1) In the event a retailer has no permanent place of business
13 in the state or has more than one place of business, the place or
14 places at which the retail sales are consummated for the purpose
15 of a sales tax imposed by an ordinance adopted pursuant to this
16 part shall, subject to paragraph (2), be determined under rules and
17 regulations to be prescribed and adopted by the board.

18 (2) In the case of a sale of jet fuel, the place at which the retail
19 sale of that jet fuel is consummated for the purpose of a sales tax
20 imposed by an ordinance adopted pursuant to this part is the point
21 of the delivery of that jet fuel to the aircraft.

22 (3) (A) *In the case of a sale of tangible personal property by a*
23 *qualified retailer that is transacted online, the place at which the*
24 *retail sale of that tangible personal property is consummated for*
25 *the purpose of a sales tax imposed by an ordinance adopted*
26 *pursuant to this part is the point of the delivery of that tangible*
27 *personal property to the purchaser's address or any other address*
28 *designated by the purchaser.*

29 (B) *A sale is "transacted online" if all of the following*
30 *conditions are met:*

31 (i) *The purchaser's order and payment for the sale and purchase*
32 *of tangible personal property is transacted and completed on an*
33 *Internet Web site or web-based application.*

34 (ii) *The purchaser's order and payment for the sale and*
35 *purchase of tangible personal property is not initiated by the*

1 *qualified retailer using the qualified retailer's equipment at the*
2 *qualified retailer's place of business.*

3 *(iii) The purchaser does not receive the tangible personal*
4 *property at the qualified retailer's place of business or at another*
5 *location designated by the qualified retailer.*

6 *(C) "Qualified retailer" means a retailer whose total cumulative*
7 *gross receipts from all of the retailer's sales, within the preceding*
8 *12 months, of tangible personal property transacted online exceeds*
9 *one hundred thousand dollars (\$100,000).*

10 *SEC. 2. Section 1 of this act, which amends Section 7205 of*
11 *the Revenue and Taxation Code, shall become operative only if*
12 *Senate Constitutional Amendment ____ of the 2017–18 Regular*
13 *Session is approved by the voters and, in that event, shall become*
14 *operative on January 1, 2020.*

15 ~~SECTION 1. (a) It is the intent of the Legislature to enact~~
16 ~~legislation that would provide that, in the case of certain sales of~~
17 ~~tangible personal property that are transacted online, the place at~~
18 ~~which the retail sale of that tangible personal property is~~
19 ~~consummated for the purpose of a local sales tax imposed pursuant~~
20 ~~to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part~~
21 ~~1.5 (commencing with Section 7200) of Division 2 of the Revenue~~
22 ~~and Taxation Code) is the point of the delivery of that tangible~~
23 ~~personal property.~~

24 ~~(b) It is the intent of the Legislature that the legislation described~~
25 ~~in subdivision (a) would be effective only if a constitutional~~
26 ~~amendment that allows the Legislature to change the method of~~
27 ~~allocation under the Bradley-Burns Uniform Local Sales and Use~~
28 ~~Tax Law is approved by the voters.~~