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Chief Executive Officer

April 10, 2018

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

Subject: **SCA 20 – SUPPORT**

Dear Senator Glazer:

The Orange County Transportation Authority (OCTA) Board of Directors is pleased to support SCA 20, your legislation that makes the constitutional changes necessary to authorize adjustments in the distribution of revenues generated from the Bradley-Burns Uniform Local Sales and Use Tax Law, as they relate to online sales. A constitutional amendment will allow statutory changes to be pursued that provide for a more equitable distribution of revenues provided under the Bradley-Burns taxes by allowing revenues to flow to the place of distribution of goods sold, rather than point-of-sale, as current law provides.

In 2017, 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. Since 1972, 0.25 percent of the Bradley Burns Uniform Sales and Use Tax has been used for each county's LTF to fund transportation programs, primarily transit services. 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

The Honorable Steve Glazer  
April 10, 2018  
Page 2

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.

As such, based on OCTA's most recent forecasts, OCTA is likely to receive about \$2-3 million less in LTF revenues annually. This will directly impact OCTA's ability to provide sustained transit operations throughout the county. This is the case, even though overall purchases from Orange County where the LTF can be assessed remain stable. If SCA 20 is enacted, 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 provision in OCTA 2017-18 State Legislative Platform's 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 SCA 20, please contact Kristin Essner, Manager of State and Federal Relations, at (714) 560-5754 or [kessner@octa.net](mailto:kessner@octa.net).

Sincerely,



Lisa A. Bartlett  
Chairwoman

LAB:jp

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



**Introduced by Senator Glazer**

March 22, 2018

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Senate Constitutional Amendment No. 20—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 25.5 of Article XIII thereof, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SCA 20, as introduced, Glazer. Local sales taxes: online sales.

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 those taxes 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, on and after January 1, 2020, would allow the Legislature to change by statute the method of distributing the revenues derived under a sales tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law for the sale of tangible personal property by a qualified retailer that is transacted online.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

1     *Resolved by the Senate, the Assembly concurring,* That the  
2     Legislature of the State of California at its 2017–18 Regular  
3     Session commencing on the fifth day of December 2016, two-thirds  
4     of the membership of each house concurring, hereby proposes to  
5     the people of the State of California, that the Constitution of the  
6     State be amended as follows:

7     That Section 25.5 of Article XIII thereof is amended to read:

8     SEC. 25.5. (a) On or after November 3, 2004, the Legislature  
9     shall not enact a statute to do any of the following:

10    (1) (A) Except as otherwise provided in subparagraph (B),  
11    modify the manner in which ad valorem property tax revenues are  
12    allocated in accordance with subdivision (a) of Section 1 of Article  
13    XIII A so as to reduce for any fiscal year the percentage of the total  
14    amount of ad valorem property tax revenues in a county that is  
15    allocated among all of the local agencies in that county below the  
16    percentage of the total amount of those revenues that would be  
17    allocated among those agencies for the same fiscal year under the  
18    statutes in effect on November 3, 2004. For purposes of this  
19    subparagraph, “percentage” does not include any property tax  
20    revenues referenced in paragraph (2).

21    (B) In the 2009–10 fiscal year only, and except as otherwise  
22    provided in subparagraph (C), subparagraph (A) may be suspended  
23    for that fiscal year if all of the following conditions are met:

24    (i) The Governor issues a proclamation that declares that, due  
25    to a severe state fiscal hardship, the suspension of subparagraph  
26    (A) is necessary.

27    (ii) The Legislature enacts an urgency statute, pursuant to a bill  
28    passed in each house of the Legislature by rollcall vote entered in  
29    the journal, two-thirds of the membership concurring, that contains

1 a suspension of subparagraph (A) for that fiscal year and does not  
2 contain any other provision.

3 (iii) No later than the effective date of the statute described in  
4 clause (ii), a statute is enacted that provides for the full repayment  
5 to local agencies of the total amount of revenue losses, including  
6 interest as provided by law, resulting from the modification of ad  
7 valorem property tax revenue allocations to local agencies. This  
8 full repayment shall be made not later than the end of the third  
9 fiscal year immediately following the fiscal year to which the  
10 modification applies.

11 (C) A suspension of subparagraph (A) shall not result in a total  
12 ad valorem property tax revenue loss to all local agencies within  
13 a county that exceeds 8 percent of the total amount of ad valorem  
14 property tax revenues that were allocated among all local agencies  
15 within that county for the fiscal year immediately preceding the  
16 fiscal year for which subparagraph (A) is suspended.

17 (2) (A) Except as otherwise provided in subparagraphs (B) and  
18 ~~(C); (C) and in subdivision (b)~~, restrict the authority of a city,  
19 county, or city and county to impose a tax rate under, or change  
20 the method of distributing revenues derived under, the  
21 Bradley-Burns Uniform Local Sales and Use Tax Law set forth in  
22 Part 1.5 (commencing with Section 7200) of Division 2 of the  
23 Revenue and Taxation Code, as that law read on November 3,  
24 2004. The restriction imposed by this subparagraph also applies  
25 to the entitlement of a city, county, or city and county to the change  
26 in tax rate resulting from the end of the revenue exchange period,  
27 as defined in Section 7203.1 of the Revenue and Taxation Code  
28 as that section read on November 3, 2004.

29 (B) The Legislature may change by statute the method of  
30 distributing the revenues derived under a use tax imposed pursuant  
31 to the Bradley-Burns Uniform Local Sales and Use Tax Law to  
32 allow the State to participate in an interstate compact or to comply  
33 with federal law.

34 (C) The Legislature may authorize by statute two or more  
35 specifically identified local agencies within a county, with the  
36 approval of the governing body of each of those agencies, to enter  
37 into a contract to exchange allocations of ad valorem property tax  
38 revenues for revenues derived from a tax rate imposed under the  
39 Bradley-Burns Uniform Local Sales and Use Tax Law. The  
40 exchange under this subparagraph of revenues derived from a tax



1 rate imposed under that law shall not require voter approval for  
2 the continued imposition of any portion of an existing tax rate from  
3 which those revenues are derived.

4 (3) Except as otherwise provided in subparagraph (C) of  
5 paragraph (2), change for any fiscal year the pro rata shares in  
6 which ad valorem property tax revenues are allocated among local  
7 agencies in a county other than pursuant to a bill passed in each  
8 house of the Legislature by rollcall vote entered in the journal,  
9 two-thirds of the membership concurring. The Legislature shall  
10 not change the pro rata shares of ad valorem property tax pursuant  
11 to this paragraph, nor change the allocation of the revenues  
12 described in Section 15 of Article XI, to reimburse a local  
13 government when the Legislature or any state agency mandates a  
14 new program or higher level of service on that local government.

15 (4) Extend beyond the revenue exchange period, as defined in  
16 Section 7203.1 of the Revenue and Taxation Code as that section  
17 read on November 3, 2004, the suspension of the authority, set  
18 forth in that section on that date, of a city, county, or city and  
19 county to impose a sales and use tax rate under the Bradley-Burns  
20 Uniform Local Sales and Use Tax Law.

21 (5) Reduce, during any period in which the rate authority  
22 suspension described in paragraph (4) is operative, the payments  
23 to a city, county, or city and county that are required by Section  
24 97.68 of the Revenue and Taxation Code, as that section read on  
25 November 3, 2004.

26 (6) Restrict the authority of a local entity to impose a  
27 transactions and use tax rate in accordance with the Transactions  
28 and Use Tax Law (Part 1.6 (commencing with Section 7251) of  
29 Division 2 of the Revenue and Taxation Code), or change the  
30 method for distributing revenues derived under a transaction and  
31 use tax rate imposed under that law, as it read on November 3,  
32 2004.

33 (7) Require a community redevelopment agency (A) to pay,  
34 remit, loan, or otherwise transfer, directly or indirectly, taxes on  
35 ad valorem real property and tangible personal property allocated  
36 to the agency pursuant to Section 16 of Article XVI to or for the  
37 benefit of the State, any agency of the State, or any jurisdiction;  
38 or (B) to use, restrict, or assign a particular purpose for such taxes  
39 for the benefit of the State, any agency of the State, or any  
40 jurisdiction, other than (i) for making payments to affected taxing

1 agencies pursuant to Sections 33607.5 and 33607.7 of the Health  
2 and Safety Code or similar statutes requiring such payments, as  
3 those statutes read on January 1, 2008, or (ii) for the purpose of  
4 increasing, improving, and preserving the supply of low and  
5 moderate income housing available at affordable housing cost.

6 *(b) (1) On and after January 1, 2020, the Legislature may*  
7 *change by statute the method of distributing the revenues derived*  
8 *under a sales tax imposed pursuant to the Bradley-Burns Uniform*  
9 *Local Sales and Use Tax Law for the sale of tangible personal*  
10 *property by a qualified retailer that is transacted online.*

11 *(2) A sale is “transacted online” if all of the following*  
12 *conditions are met:*

13 *(A) The purchaser’s order and payment for the sale and*  
14 *purchase of tangible personal property is transacted and completed*  
15 *on an Internet Web site or web-based application.*

16 *(B) The purchaser’s order and payment for the sale and*  
17 *purchase of tangible personal property is not initiated by the*  
18 *qualified retailer using the qualified retailer’s equipment at the*  
19 *qualified retailer’s place of business.*

20 *(C) The purchaser does not receive the tangible personal*  
21 *property at the qualified retailer’s place of business or at another*  
22 *location designated by the qualified retailer.*

23 *(3) “Qualified retailer” means a retailer whose total cumulative*  
24 *gross receipts from all of the retailer’s sales, within the preceding*  
25 *12 months, of tangible personal property transacted online exceeds*  
26 *one hundred thousand dollars (\$100,000).*

27 ~~(b)~~

28 *(c) For purposes of this section, the following definitions apply:*

29 *(1) “Ad valorem property tax revenues” means all revenues*  
30 *derived from the tax collected by a county under subdivision (a)*  
31 *of Section 1 of Article XIII A, regardless of any of this revenue*  
32 *being otherwise classified by statute.*

33 *(2) “Local agency” has the same meaning as specified in Section*  
34 *95 of the Revenue and Taxation Code as that section read on*  
35 *November 3, 2004.*

36 *(3) “Jurisdiction” has the same meaning as specified in Section*  
37 *95 of the Revenue and Taxation Code as that section read on*  
38 *November 3, 2004.*

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