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May 02, 2019

The Honorable Jay Obernolte
California State Assembly
State Capitol Building, Room 4116
Sacramento, California 95814

Subject: **ACA 13 (Obernolte) – SUPPORT**

Dear Assembly Member Obernolte:

The Orange County Transportation Authority (OCTA) Board of Directors is pleased to support ACA 13, your legislation that would make the constitutional changes necessary to authorize adjustments in the distribution of revenues generated from the Bradley-Burns Uniform Local Sales and Use Tax Law for online sales. A constitutional amendment would 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 entitled "The Bradley-Burns Tax and Local Transportation Funds." The audit found that LTF revenue statewide has been steadily increasing but that counties with more warehouses or distribution centers disproportionately benefit from the current distribution structure. 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.

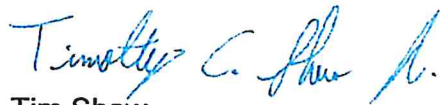
The Honorable Jay Obernolte
May 02, 2019
Page 2

OCTA is likely receiving an estimated \$2-3 million less in LTF revenues annually because of the way revenues are distributed, even though purchases in Orange County on which LTF can be assessed remain stable. This revenue shortfall directly impacts OCTA's ability to provide sustained transit operations throughout the county. If ACA 13 is successful, OCTA would receive a more equitable share of LTF funding, and extreme fluctuations due to the expected increase in online sales would be mitigated.

A SUPPORT position is consistent with the provision in OCTA 2019-20 State Legislative Platform 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 ACA 13, please contact Kristin Essner, Manager of State and Federal Relations, at (714) 560-5754 or kessner@octa.net.

Sincerely,



Tim Shaw
Chairman

TS: djs

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

Assembly Constitutional Amendment

No. 13

Introduced by Assembly Member Obernolte

March 26, 2019

Assembly Constitutional Amendment No. 13—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

ACA 13, as introduced, Obernolte. 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 measure would provide that, on and after January 1, 2021, for the purpose of distributing the revenues derived under a sales tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, the retail sale of tangible personal property by a qualified retailer, as defined, that is transacted online is instead consummated at the point of the delivery of that tangible personal property to the purchaser's address or to any other delivery address designated by the purchaser.

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

1 *Resolved by the Assembly, the Senate concurring,* That the
2 Legislature of the State of California at its 2019–20 Regular
3 Session commencing on the third day of December 2018,
4 two-thirds of the membership of each house concurring, hereby
5 proposes to the people of the State of California, that the
6 Constitution of the 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.

(ii) The Legislature enacts an urgency statute, pursuant to a bill passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, that contains a suspension of subparagraph (A) for that fiscal year and does not contain any other provision.

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

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

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

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

(C) The Legislature may authorize by statute two or more specifically identified local agencies within a county, with the approval of the governing body of each of those agencies, to enter into a contract to exchange allocations of ad valorem property tax

1 revenues for revenues derived from a tax rate imposed under the
2 Bradley-Burns Uniform Local Sales and Use Tax Law. The
3 exchange under this subparagraph of revenues derived from a tax
4 rate imposed under that law shall not require voter approval for
5 the continued imposition of any portion of an existing tax rate from
6 which those revenues are derived.

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

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

24 (5) Reduce, during any period in which the rate authority
25 suspension described in paragraph (4) is operative, the payments
26 to a city, county, or city and county that are required by Section
27 97.68 of the Revenue and Taxation Code, as that section read on
28 November 3, 2004.

29 (6) Restrict the authority of a local entity to impose a
30 transactions and use tax rate in accordance with the Transactions
31 and Use Tax Law (Part 1.6 (commencing with Section 7251) of
32 Division 2 of the Revenue and Taxation Code), or change the
33 method for distributing revenues derived under a transaction and
34 use tax rate imposed under that law, as it read on November 3,
35 2004.

36 (7) Require a community redevelopment agency (A) to pay,
37 remit, loan, or otherwise transfer, directly or indirectly, taxes on
38 ad valorem real property and tangible personal property allocated
39 to the agency pursuant to Section 16 of Article XVI to or for the
40 benefit of the State, any agency of the State, or any jurisdiction;

or (B) to use, restrict, or assign a particular purpose for such taxes for the benefit of the State, any agency of the State, or any jurisdiction, other than (i) for making payments to affected taxing agencies pursuant to Sections 33607.5 and 33607.7 of the Health and Safety Code or similar statutes requiring such payments, as those statutes read on January 1, 2008, or (ii) for the purpose of increasing, improving, and preserving the supply of low and moderate income housing available at affordable housing cost.

(b) (1) On and after January 1, 2021, for the purpose of distributing the revenues derived under a sales tax imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, the retail sale of tangible personal property by a qualified retailer that is transacted online is consummated at the point of the delivery of that tangible personal property to the purchaser's address or to any other delivery address designated by the purchaser.

(2) A sale is "transacted online" if all of the following conditions are met:

(A) The purchaser's order and payment for the sale and purchase of tangible personal property is transacted and completed on an internet website or web-based application.

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

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

(3) "Qualified retailer" means a retailer whose total cumulative gross receipts from all of the retailer's sales, within the preceding 12 months, of tangible personal property to purchasers in this state transacted online exceeds one hundred thousand dollars (\$100,000).

(4) This subdivision shall not be interpreted to prevent a city, county, or city and county from entering into a contract pursuant to subdivision (b) of Section 29 to apportion between them the revenue derived from any sales tax or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law.

(b)

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

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

6 (2) “Local agency” has the same meaning as specified in Section
7 95 of the Revenue and Taxation Code as that section read on
8 November 3, 2004.

9 (3) “Jurisdiction” has the same meaning as specified in Section
10 95 of the Revenue and Taxation Code as that section read on
11 November 3, 2004.

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14 **CORRECTIONS:**

15 **Text—Page 2.**

16