

THE FULL TEXT OF ORDINANCE NUMBER 682 REFERRED TO IN COUNTY MEASURE C IS AS FOLLOWS:

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF COLUSA IMPOSING A GENERAL TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF
EQUALIZATION**

The Board of Supervisors of the County of Colusa ordains as follows:

Section 1: Title and Summary.

This Ordinance shall be known and may be cited as the Colusa County General Transactions and Use Tax Ordinance. The Board of Supervisors of the County of Colusa declares that the County of Colusa, including all incorporated and unincorporated territory within the County, is a District pursuant to Revenue and Taxation Code section 7252.9. As used in this Ordinance, "District" includes all of the incorporated and unincorporated territory within the County of Colusa. This ordinance applies throughout the District.

Section 2: Submission to Voters; Voter Approval; Operative Date.

Upon approval by two-thirds (4 out of 5 votes) of this Board, the provisions of this Ordinance are to be submitted to the voters of the District for approval in order that the transactions and use tax can become operative, as provided by Revenue and Taxation Code section 7285. The tax submitted to the voters by this Ordinance will therefore take effect only if a majority of the electors voting on the measure at the November 2, 2004 election approve the same. If approved, the provisions of this Ordinance authorizing the levy of the one half of one percent (0.50%) transactions and use tax will become operative on the later of April 1, 2005 or the first day of the first calendar quarter following the execution of the State Board of Equalization contract in accordance with Section 6 of this Ordinance.

Section 3: Provisions of Colusa County Ordinance Regarding General Transactions and Use Tax.

The Colusa County Code is amended by adding Article V. to Chapter 18 thereof, to read as follows:

ARTICLE V. County General Transactions and Use Tax Ordinance.

Sec. 18-18 : Purpose.

This Ordinance is adopted to achieve the following, among other, purposes and this Ordinance shall be interpreted liberally to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with Part 1.6, commencing with section 7251 and Section 7285 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorizes Colusa County to levy this tax if a majority of the electors voting on the measure approve the imposition of the tax at an election.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law (Part 1 of Division 2 of the Revenue and Taxation Code) and that are not inconsistent with the requirements and limitations of the Transactions and Use Tax Law (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 therefore 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, existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will, to the greatest degree possible and consistent with the provisions of the Transactions and Use Tax Law, minimize both the cost of collecting the transactions and use taxes and the burden of record-keeping upon persons subject to taxation under this ordinance.

Sec. 18-19: Place of Sale.

For 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 the agent of the retailer 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.

Sec.18-20: Transactions and Use 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 one half of one percent (0.50%) of 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.

An excise tax is imposed on the storage, use or other consumption in this 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 the territory of this County at the rate of one half of one percent (0.50%) 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 despite the place to which delivery is made.

Sec. 18-21 : Adoption of Provisions of State Law.

Except as otherwise provided in this Ordinance and to the extent consistent with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code, the provisions of Part 1 (commencing with section 6001) of Division 2 of the Revenue and Taxation Code are hereby incorporated into and made a part of this ordinance as though fully set forth herein.

Sec. 18-22 : Limitations on Adoption of State Law and Collection of Taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, wherever the State of California is named or referred to as the taxing authority, the name of this County will be substituted for it. However, the substitution will not be made when:

1. The word "State" is used as 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 of it 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 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.

(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 provisions of that Code.

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

5. The word "District" shall be substituted for the word "State" in the phrase "retailer engaged in business in this state" in section 6203 of the Revenue and Taxation Code and in the definition of that phrase in that section.

Sec. 18-23: 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 is not required by this Ordinance. However, nothing in this Ordinance shall be deemed or construed to waive, or exempt any person from, any other provision of law requiring a permit for the sale, storage, use or other consumption of tangible personal property.

Sec. 18-24: Exemption 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 (Part 1.5 of Division 2 of the Revenue and Taxation Code) or the amount of any State administered transactions or use tax.

b. There are exempted from the computation of the amount of the 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 California, the United States, or any foreign government;

2. Sales of property to be used outside this County which is shipped to a point outside this County, pursuant to the contract of sale, by delivery to such a 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 subparagraph, delivery to a point outside this County will be satisfied:

(A) With respect to vehicles (other than commercial vehicles) subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed according to Section 21411 of the Public Utilities Code, and undocumented vessels registered under 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 an 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, stating 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 under a contract entered into before 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 before the operative date of this Ordinance.

5. For the purposes of subparagraphs 3 and 4 of this section, the sale or lease of tangible personal property will be deemed not to be obligated under 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 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 under the laws of California, 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;

3. If the purchaser is obligated to purchase the property for a fixed price under a contract entered into before 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 entered into before the operative date of this Ordinance;

5. For the purposes of subparagraphs 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 will be deemed not to be obligated under 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 this County will not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into this County or participates within this 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 this County or through any representative, agent, canvasser, solicitor, subsidiary, or person in this County under the authority of the retailer; and

7. "A retailer engaged in business in this County" shall also include any retailer of the following: vehicles subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed according to Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. Such a retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel or aircraft at an address in this 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 district imposing, or a retailer liable for a transactions tax under 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.

Sec. 18-25 : Amendments to the Revenue and Taxation Code.

All amendments to Part 1 of Division 2 of the Revenue and Taxation Code, effective after the date of adoption of this Ordinance and relating to sales and use taxes, will automatically become a part of this Ordinance to the extent consistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, but no such amendment will operate to affect the rate of tax imposed by this Ordinance.

Sec. 18-26 : Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process will issue in any suit, action or proceeding in any court against the State of California or this County, or against any officer of the State of California or this 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.

Sec. 18-27: Use of The Taxes.

The proceeds of any and all transactions and use taxes collected under this Ordinance shall be used for general fund purposes within this County. The division of the tax allocable to the County shall be determined by the Colusa County Board of Supervisors.

Section 4. CEQA not applicable to tax:

The Board of Supervisors finds and declares that the submittal of the tax imposed by this Ordinance to the electorate of Colusa County for approval is required by Revenue and Taxation Code section 7285. The Board of Supervisors further finds and declares that the purpose of the tax imposed by this Ordinance is to raise general revenue to meet District operating expenses, including but not limited to employee wages and salaries and fringe benefits; purchasing or leasing supplies, equipment or materials; meeting financial reserve needs and requirements; or obtaining funds for capital projects necessary to maintain service within existing service areas. Therefore, pursuant to Public Resources Code section 21080(b)(8) and sections 15273(a) and 15378(b)(4) of Title 14 of the California Administrative Code, the submittal of the tax imposed by this Ordinance to the electorate of Colusa District for approval and the imposition of that tax by this Ordinance are deemed to be exempt from environmental review under the California Environmental Quality Act.

Section 5. Proposition 62.

This Ordinance complies with and provides all information required by sections 53720 through 53730 of the California Government Code.

Section 6. Contract with State.

Before April 1, 2005, the County will 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 has not contracted with the State Board of Equalization before April 1, 2005, it will nevertheless reach such an agreement, with the operative date of the contract being the first day of the first calendar quarter following the execution of the contract.

Section 7. Election Costs.

Payment for the costs of the election shall be the responsibility of the County.

Section 8. Implementing policies and regulations.

Upon approval of this Ordinance by a majority of the voters, the County may adopt policies and regulations and take such other action consistent with this Ordinance as may be necessary for the implementation of the one half of one percent (0.50%) transactions and use tax authorized by this Ordinance.

Section 9. Majority Voter Approval; Effective and Operative Date if Approved by Voters.

This Ordinance is an ordinance calling for or otherwise relating to an election, and shall therefore take effect immediately upon adoption by this Board. However, the resolution submitting the transactions and use tax to the voters will take effect only if approved by two-thirds (4 out of 5 votes) of this Board. Furthermore, the tax itself will take effect only if approved by a majority of the electors voting on the measure at the November 2, 2004 election. If approved, the provisions of this Ordinance authorizing the levy of the one half of one percent (0.50%) transactions and use tax will become operative on the later of April 1, 2005 or the first day of the first calendar quarter following the execution of the State Board of Equalization contract in accordance with Section 6 of this Ordinance.

Section 10. Termination Date.

This ordinance will terminate on the later of March 31, 2008, or 3 years after the first day of the first calendar quarter following the execution of the State Board of Equalization contract in accordance with Section 6 of this Ordinance.

Section 11. Severability.

If any provision of this Ordinance or its application 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.

This ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

Within 15 days after passage of this ordinance, the county clerk shall cause it to be published at least once per week for two successive weeks in a newspaper of general circulation published and circulated within the County of Colusa.

The foregoing ordinance was introduced at a general meeting of the Colusa County Board of Supervisors on June 29, 2004, and

PASSED AND ADOPTED this 13 day of July, 2004, by the following vote:

- Ayes: Supervisors Womble, Scofield, White and Marshall.
- Noes: Supervisor Waite.
- Absent: None.

/s/ Mark D. Marshall
Mark Marshall, Chairperson
Colusa County Board of Supervisors

APPROVED AS TO FORM:

/s/ G. Stearns
Georgia A. Stearns
Interim County Counsel

ATTEST:

KATHLEEN MORAN, Clerk/Recorder
and ex officio Clerk to the
Board of Supervisors
By /s/ Yolanda Tirado