



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.

COUNCIL MEETING 05/15/2007

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

May 15, 2007

FROM: KAREN M. BRADLEY, Assistant City Controller
Finance Department

SUBJECT: BILL FOR INTRODUCTION TO AMEND SUBSECTIONS (a) and (b) OF SECTIONS 4-504 AND 4-505 OF THE FRESNO MUNICIPAL CODE RELATING TO LOCAL SALES AND USE TAXES, PURSUANT TO A MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF FRESNO (MOU)

RECOMMENDATION

Staff recommends that Council give consideration to and direct staff to move forward with the process necessary for the adoption of the attached amendment to the Sales and Use Tax Ordinance which will increase the City's shared allocation of the existing Sales and Use Tax pursuant to the City's MOU with the County of Fresno.

EXECUTIVE SUMMARY

A Memorandum of Understanding (the "2003 MOU") between the County of Fresno and the City of Fresno allows the City to increase its proportionate share of the local sales and use tax from .9471 percent to .9473 percent effective July 1, 2007, without increasing the amount of sales tax that is charged to consumers. This is accomplished by increasing the City's share, and decreasing the County's share of the statutory one percent designated to local governments. This amendment will increase the City's allocation share of the existing Sales and Use Tax pursuant to the City's MOU with the County of Fresno which states that if the sales tax revenue of the City meets certain criteria under a specified formula, the City may increase its share of sales tax and receive an additional percentage of the taxes the next fiscal year. The additional percentage for fiscal year 2008 is .0002 percent. According to the Charter, an ordinance must be introduced but cannot be adopted by Council on the day of its introduction, nor within five days of its introduction. Upon Council's consideration of this resolution and direction to Staff, the Ordinance will be presented for adoption at the next scheduled Council meeting.

BACKGROUND

On January 6, 2003, the City Council approved an Amended and Restated Memorandum of Understanding (the "2003 MOU") with the County of Fresno which provides for an allocation formula of Sales and Use Tax rates by the two agencies over the life of the agreement. The distribution of Sales and Use Tax between the City and County is currently .9469 percent for the City and .0531 percent for the County. The 2003 MOU allows the City to increase its share of sales tax and receive an additional .0002 percent for fiscal year 2008.

Only the distribution of the existing Sales and Use Tax rate has changed. There is no increase in the overall tax rate paid by the consumer. Attached for introduction and consideration is the proposed

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BILL FOR INTRODUCTION TO AMEND THE SALES TAX ORDINANCE PURSUANT
TO AGREEMENT WITH THE COUNTY OF FRESNO MEMORANDUM OF
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amendment to the Sales and Use Tax Ordinance, Fresno Municipal Code Chapter 4, Article 5, which changes the City's shared rate to .9473 percent, effective July 1, 2007.

FISCAL IMPACT

This amendment will result in an increase in the General Fund revenues of approximately \$17,500 in fiscal year 2008.

Attachment: Resolution

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY _____, SECONDED BY _____

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
AMENDING SUBSECTIONS (a) AND (b) OF SECTION 4-504,
AND SUBSECTIONS (a) AND (b) OF SECTION 4-505 OF THE
FRESNO MUNICIPAL CODE, RELATING TO LOCAL SALES
AND USE TAXES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsections (a) and (b) of Section 4-504 of the Fresno Municipal Code are amended to read:

SECTION 4-504. SALES TAX.

(a) (1) Effective July 1, ~~2006~~ [2007], for the privilege of selling tangible personal property at retail a tax is hereby imposed on all retailers in the City at the rate of ~~0.9474~~ [0.9473] percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City.

(2) 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 designation or to a common carrier for delivery to an out-of-state designation. 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 Board of Equalization.

(b) (1) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of part 1.5 of division 2 of the Revenue and Taxation Code of the state, all of the provisions of part 1 of division 2 of such Code, as amended and in force and effect on July 1, 1959, applicable to sales taxes are hereby adopted and made a part of this section as though fully set forth herein.

(2) Wherever, and to the extent that, in part 1 of division 2 of the state Revenue and Taxation Code, the state is named or referred to as the taxing agency, the City of Fresno shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of the City of Fresno for the word "state" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the city or any agency thereof, rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this article; and neither shall the substitution be deemed to have been made in

those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the state, where the result of the substitution would be to provide an exemption from this tax with respect to certain gross receipts which would not otherwise be exempt from this tax while those gross receipts remain subject to tax by the state under the provisions of part 1 of division 2 of the Revenue and Taxation Code; nor to impose this tax with respect to certain gross receipts which would not be subject to tax by the state under such provisions of that Code; and, in addition, the name of the city shall not be substituted for that of the state in sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the Revenue and Taxation Code as adopted.

(3) If a seller's permit has been issued to a retailer under section 6067 of the Revenue and Taxation Code, an additional seller's permit shall not be required by reason of this section.

(4) There shall be excluded from the gross receipts by which the tax is measured:

(i) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer.

(ii) The gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(iii) The gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city 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.

~~—(5) During the term of the "Memorandum of Understanding between the County of Fresno, City of Fresno and the Fresno Redevelopment Agency" dated February 26, 1991, on file with the City Clerk (the "MOU"), there shall be a credit to a taxpayer against the payment of sales taxes due to city in an amount equal to the sales tax then due to the County of Fresno by that taxpayer pursuant to the terms of the MOU.~~

~~—[(5) During the term of the "Amended and Restated Memorandum of Understanding between the County of Fresno and the City of Fresno" dated January 6, 2003, on file with the City Clerk (the "MOU"), there shall be a credit to a taxpayer against the payment of sales taxes due to city in an amount equal to the sales tax then due to the County of Fresno by that taxpayer pursuant to the terms of the MOU.]~~

SECTION 2. Subsections (a) and (b) of Section 4-505 of the Fresno Municipal Code are amended to read:

SECTION 4-505. USE TAX

(a) An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on or after the

operative date of this article for storage, use or other consumption in the City at the rate of ~~.09471~~ [0.9473] percent of the sales price of the property from and after July 1, ~~2006~~[2007]. 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.

(b) (1) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of part 1.5 of division 2 of the Revenue and Taxation Code of the state, all of the provisions of part 1 of division 2 of such code, as amended and in force and effect on July 1, 1959, applicable to use taxes are hereby adopted and made a part of this section as though fully set forth herein.

(2) Wherever, and to the extent that, in part 1 of division 2 of the said Revenue and Taxation Code the State of California is named or referred to as the taxing agency, the name of this city shall be substituted therefor. Nothing in this subdivision shall be deemed to require the substitution of the name of this city for the word "state" when that word is used as part of the title of the State Controller, the State Treasurer, the State Board of Control, the State Board of Equalization, or the name of the State Treasury, or of the Constitution of the State of California; nor shall the name of the city be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the city or any agency thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this ordinance; and neither shall the substitution be deemed to have been made 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

provide an exemption from this tax with respect to certain storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such storage, use or other consumption remains subject to tax by the State under the provisions of part 1 of division 2 of the said Revenue and Taxation Code, or to impose this tax with respect to certain storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provisions of that Code; and in addition, the name of the city shall not be substituted for that of the state in Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 and 6828 of the said Revenue and Taxation Code as adopted, and the name of the city shall not be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 nor in the definition of that phrase in Section 6203.

(3) There shall be exempt from the tax due under this section:

(i) The amount of any sales or use tax imposed by the State of California upon a retailer or consumer.

(ii) The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which has been subject to sales tax under a sales and use tax ordinance enacted in accordance with Part 1.5 of Division 2 of the Revenue and Taxation Code by any city and county, county, or city in this state.

(iii) The storage, use or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed

by such operators directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

(iv) In addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property 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.

~~(4) During the term of the "Memorandum of Understanding between the County of Fresno, the City of Fresno and the Fresno Redevelopment Agency" dated February 26, 1991, on file with the City Clerk (the "MOU"), there shall be a credit to a taxpayer against the payment of use taxes due to city in an amount equal to the use tax then due to the County of Fresno by that taxpayer pursuant to the terms of the MOU.~~

[(4) During the term of the "Amended and Restated Memorandum of Understanding between the County of Fresno and the City of Fresno " dated January 6, 2003, on file with the City Clerk (the "MOU"), there shall be a credit to a taxpayer against the payment of use taxes due to city in an amount equal to the use tax then due to the County of Fresno by that taxpayer pursuant to the terms of the MOU.]

SECTION 3. This ordinance shall become effective and in full force and effect upon its final passage.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the _____ day of _____, 2007.

AYES:
NOES:
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2007

Mayor Approval/No Return: _____, 2007

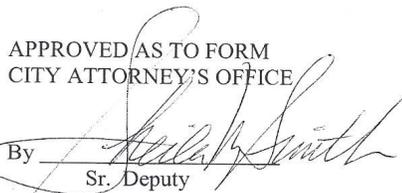
Mayor Veto: _____, 2007

Council Override Vote: _____, 2007

REBECCA E. KLISCH
City Clerk

By _____

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By  Sr. Deputy