

**ORDINANCE NO. 2016- 1770**

**AN ORDINANCE ADDING ARTICLE XVII TO CHAPTER 11 OF THE SOLANO COUNTY CODE IMPOSING A GENERAL COUNTYWIDE TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION**

The people of the County of Solano ordain as follows:

**Section 1.**

Article XVII is added to Chapter 11 of the Solano County Code to read:

ARTICLE XVII. SOLANO COUNTY 2016 TRANSACTIONS AND USE TAX

Section 11- 700 Title.

This ordinance shall be known as the "Solano County 2016 Transactions and Use Tax Ordinance." This ordinance shall be applicable in the incorporated and unincorporated territory of Solano County ("the "County").

Section 11- 701 Operative Date.

"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance.

Section 11 – 702 Purpose.

This ordinance is adopted to achieve the following, among other purposes, and directs that its provisions are interpreted to accomplish those purposes:

(a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with section 7251) of Division 2 of the Revenue and Taxation Code and section 7285 of Part 1.7 of Division 2 of the Revenue and Taxation Code, which authorizes the County to adopt this tax ordinance which shall be operative if a majority of the qualified voters voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

(b) To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are consistent with the requirements and limitations contained in 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 for it that the State Board of Equalization can administer and collect in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California Sales and Use Taxes.

(d) To adopt a retail transactions and use tax ordinance which can be administered in a manner that shall be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

(e) To raise the appropriations limit for the County.

Section 11- 703 Contract with State.

Prior to the operative date, the County shall 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 prior to the operative date, it shall nevertheless so contract, and in that case the operative date will be the first day of the first calendar quarter following the execution of the contract.

Section 11- 704 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of 1/2 of 1 percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the territory on and after the operative date of this ordinance.

Section 11- 705 Place of Sale.

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 or her agent 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.

Section 11- 706 Use Tax Rate.

An excise tax is imposed on the storage, use or other consumption in the 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 at the rate of 1/2 of 1 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 regardless of the place to which delivery is made.

Section 11- 707 Adoption of Provisions of State Law.

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with section 6001) of Division 2 of the Revenue and Taxation Code are adopted and incorporated by this reference.

Section 11- 708 Limitations on Adoption of State Law and Collection of Use Taxes.

(a) 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 shall be substituted for it. However, the substitution shall not be made when:

(1) The word "State" is used as a 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, or

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.

(b) The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in section 6203 and in the definition of that phrase in section 6203.

#### Section 11- 709 Permit Not Required.

If a seller's permit has been issued to a retailer under section 6067 of the Revenue and Taxation Code, this ordinance shall not require an additional transactor's permit.

#### Section 11- 710 Exemptions 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 Sale and Use Tax Law or the amount of any state administered transactions or use tax.

(b) There are exempted from the computation of the amount of 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 the County which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such 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 subsection, delivery to a point outside the County shall 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 Chapter 2 of 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 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 shall 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 prior to 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 prior to the operative date of this ordinance.

(5) For the purposes of subsections (3) and (4) of this subdivision, the sale or lease of tangible personal property shall 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 transactions 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 before the operative date of this ordinance.

(5) For the purposes of subsections (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 shall 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 for in subsection (7), a retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or participates within the 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 the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

(7) "A retailer engaged in business in the 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. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the 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 county 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.

#### Section 11- 711 Amendments.

All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate to affect the rate of tax imposed by this ordinance.

#### Section 11- 712 Enjoining Collection Forbidden.

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

#### Section 11 - 713 Use of the Taxes.

The tax imposed by this ordinance is a general tax within the meaning of article XIII C, section 1(a) of the California Constitution. The revenue generated by this general tax is available for general governmental purposes and shall be paid into the General Fund for use by the County.

#### Section 11 – 714 Increase of Appropriations Limit.

The appropriations limit of the County shall be increased by the amount of the revenue anticipated to be collected by the County from the transactions and use tax to allow spending of the tax revenue for the period allowed by law.

Section 11 - 715 Independent Citizens' Oversight Committee and Annual Audit.

(a) The Board of Supervisors shall establish a citizens' oversight committee to provide transparency and ensure fiscal accountability. The committee shall review the receipt and expenditures of the revenue from the transactions and use tax, including the County's annual independent audit. The committee's review shall be completed in conjunction with the County's budget process. The committee shall produce an annual oral or written report on its review which shall be considered by the Board of Supervisors at a public meeting. The committee may provide budget recommendations to the Board of Supervisors regarding expenditures from the transactions and use tax. Any written report shall be a public record. The Board of Supervisors shall adopt a resolution regarding the appointment of the committee members and any additional duties of the committee.

(b) The funds collected from the transactions and use tax ordinance shall be accounted for and tracked by the county auditor-controller in a separate fund to facilitate citizen oversight.

(c) The amount generated by this general purpose revenue source and how it was used shall be included in the annual audit of the County's financial operations by an independent certified public accountant, which the committee shall review.

(d) To preserve the integrity and independence of the oversight process, the committee's responsibilities shall not include decision-making on spending priorities, financing plans or tax rate projections or assumption and the committee shall have no authority to direct, nor shall it direct, County staff or officials.

Section 11- 716 Effective Date.

This ordinance relates to the levying and collecting of the County's transactions and use taxes and shall take effect immediately upon the close of the polls on June 7, 2016, if approved by a majority of the qualified voters of the entire county voting on the measure at the election held that day.

Section 11- 717 Termination Date.

The authority to levy the tax imposed by this ordinance shall expire five (5) years from the operative date, unless extended by the voters in the manner set forth in Revenue and Taxation Code section 7285.

Section 11-718 Compliance with California Environmental Quality Act (CEQA).

Under CEQA Guidelines section 15378(b)(4), adoption of this ordinance is not a project subject to the requirements of CEQA.

Section 11- 719 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.

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**Section 2.**

This ordinance shall be published once within fifteen (15) days after its passage, in the Fairfield Daily Republic, a newspaper of general circulation in Solano County.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on February 9, 2016, by the following vote:

AYES:	SUPERVISORS	<u>Seifert, Spring, Thomson, Vasquez</u> <u>and Chairwoman Hannigan</u>
NOES:	SUPERVISORS	<u>None.</u>
EXCUSED:	SUPERVISORS	<u>None.</u>

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ERIN HANNIGAN, Chairwoman  
Solano County Board of Supervisors

ATTEST:  
BIRGITTA E. CORSELLO, Clerk  
Board of Supervisors

By:   
Jeanette Bellinder, Chief Deputy Clerk

**Introduced: February 2, 2016**  
**Adopted: February 9, 2016**  
**Effective: June 7, 2016 [if voter approved]**  
**Operative: October 1, 2016 [if voter approved]**