



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**  
**County Counsel**



**DATE:** February 7, 2012  
**BOARD MEETING DATE:** February 14, 2012  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Four-Fifths

**TO:** Honorable Board of Supervisors

**FROM:** John C. Beiers, County Counsel

**SUBJECT:** Business License Tax on Operators of Vehicle Rental Businesses in the Unincorporated County at a Rate of Two and One-Half Percent (2.5%) of Gross Receipts

**RECOMMENDATION:**

Introduce an ordinance imposing a business license tax on operators of vehicle rental businesses at the rate of two and one-half percent (2.5%) of gross receipts of vehicle rental businesses in the unincorporated county.

**BACKGROUND:**

At its meeting of January 31, 2012, this Board discussed instituting a business license tax on vehicle rental activities in the unincorporated area of the County in order to raise general fund revenues. At that meeting, the Board directed staff to prepare a form of ordinance imposing such a tax for the Board's consideration.

The County does not presently impose a business license tax on vehicle rental businesses, although we have determined that many other California jurisdictions do impose business license taxes on such businesses. The County Manager's Office is informed that operators of vehicle rental businesses in the unincorporated area of the County generated gross receipts of up to \$310,000,000 during the year ending December 31, 2010.

**DISCUSSION:**

Section 7284 of the California Revenue and Taxation Code vests counties with the authority to impose a license tax upon every kind of lawful business transacted in the unincorporated area of the county.

Although the County may adopt a business license tax such as the one discussed above for the purposes of generating general fund revenues, Proposition 218, incorporated as Articles XIII C and D of the California Constitution (and related provisions of the California Government Code) provide that, because it is a general tax, it may be imposed only if it is approved by a majority vote of the County electorate in an election

consolidated with a regularly scheduled general election for members of the Board of Supervisors. The Government Code provides that a local governmental agency may not present a proposal for a general tax to the electorate unless the agency's governing board has approved, by a two-thirds vote, an ordinance or resolution proposing the tax. Consequently, any proposal to impose a business license tax on vehicle rental businesses would need to be approved by no fewer than four members of this Board before it may be submitted to the County electorate.

Under California law, ordinances must be adopted at a regular meeting of this Board taking place at least five days after the ordinance is first introduced. We are therefore recommending that an ordinance imposing a business license tax on vehicle rental businesses be introduced at the Board's February 14, 2012 meeting. The Board can then adopt the ordinance at its meeting of February 28, 2012, which is its last regular meeting that is at least eighty-eight days before the June 5, 2012 election. (The Election Code requires that an election be called at least eighty-eight days before the scheduled election date.) If the Board determines to adopt the ordinance at its meeting on February 28th, it should also adopt a resolution at that time calling for an election to submit the tax to a vote of the electorate in June. My office will have a form of resolution calling for such an election ready for the Board's consideration.

The adoption of this Ordinance contributes to the Shared Vision 2025 Outcome of a Collaborative Community by providing a continuing source of general funds for the County's programs and services.

**FISCAL IMPACT:**

The vehicle rental businesses in the unincorporated area of the County generated approximately \$310,000,000 during the year ending December 31, 2010. The amount of revenue generated by a business license tax would depend on the percent of gross receipts at which the tax rate is set. However, based on 2010 figures and by way of example, each one percent of tax rate would generate approximately \$3,100,000 in general fund revenues. Thus, a business license tax at the rate of two and one-half percent of gross receipts would generate approximately \$7.750 million in general fund revenues.

The cost of placing one measure on the June 2012 ballot, as required by Proposition 218, is estimated at \$200,000, and each additional measure would cost \$40,000. Your Board is considering three tax measures for the ballot: an increase to the Transient Occupancy Tax ("TOT"); a business license tax on commercial parking; and this business license tax on vehicle rentals. If the Board approves all three proposed measures, each will cost approximately \$93,333; if the Board approves just two measures, each will cost approximately \$120,000; if the Board approves only this measure, it will cost approximately \$200,000. These amounts would not be recoverable with respect to measures that fail.

**ORDINANCE NO. \_\_\_\_\_**  
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA

\* \* \* \* \*

AN ORDINANCE IMPOSING A BUSINESS LICENSE TAX ON OPERATORS OF  
VEHICLE RENTAL BUSINESSES AT THE RATE OF TWO AND ONE-HALF  
PERCENT (2.5%) OF GROSS RECEIPTS OF VEHICLE RENTAL BUSINESSES  
IN THE UNINCORPORATED COUNTY

The Board of Supervisors of the County of San Mateo, State of California,

**ORDAINS** as follows

**SECTION 1.** The Board of Supervisors of the County of San Mateo declares the following:

- A. Section 7284 of the California Revenue and Taxation Code authorizes the Board of Supervisors of any County to license for revenue and regulation, and to fix the license tax upon, every kind of lawful business transacted in the unincorporated area of the County.
- B. Section 2 of Article XIIC of the California Constitution, and section 53723 of the California Government Code, authorize the County to impose a general tax upon a majority vote of the electorate.
- C. Pursuant to section 9140 of the California Elections Code, this Board may submit to the voters, without petition, a measure relating to the enactment of any ordinance.
- D. This Board deems it appropriate to adopt an ordinance, pursuant to the County's taxing authority, to impose a business license tax on operators of vehicle rental businesses located in the unincorporated area of the County in order to generate revenue that will be placed in the general fund to support general County services and functions. This Board also deems it appropriate to submit this ordinance imposing a business license tax to a vote of the electorate.

**SECTION 2.** The following measure to add Chapter 5.150 to the San Mateo County Ordinance Code shall be submitted to the electorate on June 5, 2012.

"Shall Chapter 5.150 be added to the San Mateo County Ordinance Code, imposing a business license tax of two and one-half percent (2.5%) of gross receipts on operators of vehicle rental businesses located in the unincorporated area of San Mateo County?"

**SECTION 3.** Chapter 5.150, consisting of sections 5.150.010 through 5.150.150, of Title 5 of the San Mateo County Ordinance Code is hereby added as follows:

**Chapter 5.150 Business License Tax on Operators of Vehicle Rental Businesses**

#### **5.150.010 Vehicle Rental Business Defined.**

"Vehicle rental business" means any business or activity, regardless of how organized or owned, that is operated by a private individual or entity which rents, for any form of consideration, any motor propelled vehicle or truck, including motorcycles, or other similar means of motorized land conveyance for passengers or property.

#### **5.150.020 Operator Defined.**

"Operator" means any person who, as owner, lessee, employee, agent, or otherwise, operates, maintains, manages, keeps, permits or allows to be operated, maintained, managed, kept, or permitted any vehicle rental business within the unincorporated area of the County of San Mateo.

#### **5.150.030 Gross Receipts Defined.**

"Gross receipts" includes the total of amounts actually received or receivable for the renting of any motor propelled vehicle or truck, including motorcycles, or of any similar means of motorized land conveyance for passengers or property and for the rental or provision of any associated optional equipment, services, or insurance, or for the performance or provision of any other act or service, of whatever nature it may be, for which a charge is made or credit allowed. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:

- (a) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
- (b) Such part of the price of services refunded either in cash or by credit to the consumer or customer upon rescission of the contract;
- (c) Amounts collected by operators for others where the operator is acting as an agent or trustee, to the extent that such amounts are paid to those for whom the operator is acting as an agent or trustee, provided that the operator has provided the County Tax Collector with the names and addresses of those for whom the operator is acting as an agent or trustee, and the amounts paid to them; and
- (d) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

#### **5.150.040 Business License Tax Imposed.**

Every operator of a vehicle rental business operated within the unincorporated area of the County shall pay a business license tax of two and one-half percent (2.5%) of the gross receipts received from the vehicle rental business.

#### **5.150.050 Registration.**

Within thirty (30) days after the effective date of this chapter, or within thirty (30) days after commencing business, whichever is later, each operator of a vehicle rental business shall register said vehicle rental business with the Tax Collector and obtain from him a "Vehicle Rental Business License Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the

following:

- (1) The name of the operator;
- (2) The address of the vehicle rental business;
- (3) The date upon which the certificate was issued;
- (4) "This Vehicle Rental Business License Certificate signifies that the person named on the face hereof has fulfilled the requirements of this chapter by registering with the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a vehicle rental business without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of this County. This certificate does not constitute a permit."

#### **5.150.060 Reporting and Remitting of Business License Tax.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by the Tax Collector, of the operator's gross receipts from the vehicle rental business. At the time the return is filed, the full amount of the business license tax due shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any operator if the Tax Collector deems it necessary in order to insure collection of the tax and the Tax Collector may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason.

#### **5.150.070 Penalties and Interest**

- (a) Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of Ten Percent (10%) of the amount of the tax in addition to the amount of the tax.
- (b) Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of Ten Percent (10%) of the amount of the tax in addition to the amount of the tax and the Ten Percent (10%) penalty first imposed.
- (c) Fraud. If the Tax Collector determines that the nonpayment of any remittance due under this chapter is due to fraud of the operator, a penalty of Twenty-Five Percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs (a) and (b) of this section.
- (d) Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Interest shall be imposed on penalties from thirty (30) days after an operator is notified of a delinquency.
- (e) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

- (f) Penalties imposed by this section are in addition to any other penalties provided for in other sections of this code.

**5.150.080 Failure to Report Tax. Determination of Tax by Tax Collector.**

If any operator shall fail or refuse to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Tax Collector shall proceed in such manner as the Tax Collector may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as the Tax Collector is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to make such report and remittance, the Tax Collector shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Collector shall give a notice of the amount so assessed, serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known place of address. Such operator may, within ten (10) days after the serving or mailing of such notice, make application in writing to the Tax Collector for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Collector shall become final and conclusive and immediately due and payable. If such application is made, the Tax Collector shall give not less than five (5) days written notice in the manner prescribed herein to the operator to show cause at time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing, the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in section 5.150.090.

**5.150.090 Appeal.**

Any operator aggrieved by any decision of the Tax Collector with respect to the amount of such tax, interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Supervisors shall fix a time and place for hearing such appeal, and the Clerk of the Board of Supervisors shall give notice in writing to such operator at his last known place of address. The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

**5.150.100 Records.**

It shall be the duty of every vehicle rental business operator liable for the payment to the County of any license tax imposed by this chapter to keep and preserve, for a period of

three years, all records as may be necessary to determine the amount of such license tax as the operator may have been liable for the payment to the County, which records the County Tax Collector shall have the right to inspect at all reasonable times.

#### **5.150.110 Refunds.**

- (a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the County under this chapter, it may be refunded as provided in subparagraphs (b) and (c) of this section provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Collector within three (3) years of the date of payment. The claim shall be on forms furnished by the Tax Collector.
- (b) At the election of the operator, any amount overpaid, paid more than once or erroneously or illegally collected or received, may be refunded or credited against future taxes owed under this Chapter 5.150.
- (c) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

#### **5.150.120 Collection of Tax**

- (a) Actions to Collect. Any tax required to be paid under the provisions of this chapter shall be deemed a debt owed by the operator to the County. Any person owing money to the County under the provisions of this chapter shall be liable to an action brought in the name of the County of San Mateo for the recovery of such amount.
- (b) Recording Certificate. Lien. If any amount required to be paid to the County under this ordinance is not paid when due, the Tax Collector, may within three (3) years after the amount is due file for record in the office of the San Mateo County Recorder a certificate specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Tax Collector of the operator liable for same and the fact that the Tax Collector has complied with all provisions of this ordinance in the determination of the amount required to be paid. From the time of the filing for record, the amount required to be paid together with penalties and interest constitutes a lien upon all real property in the County owned by the operator or afterwards and before the lien expired acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the certificate unless sooner released or otherwise discharged.
- (c) Priority and Lien of Tax. The amounts required to be paid by any operator under this ordinance with penalties and interest shall be satisfied first in any of the following cases:
  - (1) Whenever the person is insolvent;
  - (2) Whenever the person makes a voluntary assignment of his assets;
  - (3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased;
  - (4) Whenever the estate and effects of an absconding, concealed or absent person required to pay any amount under this ordinance levied upon by

process of law. This ordinance does not give the County a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien. The preference given to the County by this section shall be subordinate to the preferences given to claims for personal services by sections 1204 and 1206 of the Code of Civil Procedure.

- (d) **Warrant for Collection of Tax.** At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid off within (3) years after the last recording of a certificate of lien under section 5.150.120(b), the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this ordinance. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff, marshal or constable, the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution. The Tax Collector, and not the court, shall approve the fees for publication in a newspaper.
- (e) **Seizure and Sale.** At any time within three (3) years after any operator is delinquent in the payment of any amount, the Tax Collector may forthwith collect the amount in the following manner: The Tax Collector shall seize any property, real or personal, of the operator and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any penalties and interest imposed for the delinquency and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.
- (f) **Successor's Liability. Withholding by Purchaser.** If any operator liable for any amount under this ordinance sells out his business or quits the business, his successor or assignee shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Collector showing that it has been paid or a certificate stating that no amount is due.
- (g) **Liability of Purchaser. Release.** If the purchaser of a vehicle rental business fails to withhold amounts from the purchase price as required, he shall become personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within sixty (60) days after receiving a written request from the purchaser for a certificate, or within sixty (60) days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than ninety (90) days after receiving the request, the Tax Collector shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Tax Collector of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Collector to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the operator sells his business or at the time the determination against the operator



becomes final, whichever event occurs the later.

**5.150.130 Effective Date.**

The business license tax provided for in this ordinance shall become effective on July 1, 2012 and all gross receipts of vehicle rental business operators from and after that date shall be subject to the business license tax imposed by this Chapter 5.150.

**5.150.140 Violations.**

Any vehicle rental business operator or other person who fails or refuses to pay the license tax required herein, or to furnish the County Tax Collector with data required by the Tax Collector in connection with collection of the license tax, or who renders false or fraudulent data, is guilty of a misdemeanor, and is punishable as otherwise provided in this code and by general law. Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of a misdemeanor and is punishable as otherwise provided in this code and by general law.

**5.150.150 Severability.**

If any provision of this Chapter 5.150 or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby."

**SECTION 4.** The license tax provided for in this ordinance shall become effective on July 1, 2012; provided however, that this ordinance and the license tax imposed hereby shall not become effective unless the proposal to impose the license tax receives a majority vote of the electorate in that election.

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