

CITY OF COLUSA
MEASURE A
ORDINANCE NO. _____

AN ORDINANCE OF THE PEOPLE OF THE CITY OF COLUSA ADDING CHAPTER 8, ARTICLE IX TO THE COLUSA MUNICIPAL IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE STATE BOARD OF EQUALIZATION, AS APPROVED BY A MAJORITY OF THE ELECTORS VOTING AT A STATEWIDE ELECTION HELD ON NOVEMBER 8, 2016, WITHIN THE CITY OF COLUSA

The People and the City Council of the City of Colusa, California, do ordain as follows:

SECTION 1: The Colusa Municipal Code shall be amended to add, Chapter 8, Article IX. - Transactions and Use Tax, to read as follows:

“Sec. 8-65. Title:

This article shall be known as the City of Colusa Transactions and Use Tax Ordinance. The City of Colusa hereinafter shall be called “city.” This article shall be applicable in the incorporated territory of the city.

Sec. 8-66. Operative date:

“Operative date” means the first day of the first calendar quarter commencing more than one hundred ten days after the adoption of the ordinance codified in this article, the date of such adoption being as set forth below.

Sec 8-67. Purpose:

This article is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order 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 7285.9 of Part 1.7 of Division 2 which authorizes the city to adopt this tax ordinance which shall be operative if a majority of the electors 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 not inconsistent 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 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, the 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 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 article.

Sec. 8-68. - Contract with state.

Prior to the operative date, the city 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 city shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Sec. 8-69. - Transactions tax rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the city at the rate of three-quarters of one percent of the 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 the ordinance codified in this article.

Sec. 8-70. - Place of sale.

For the purposes of this article, 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 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. 8-71. - Use tax rate.

A use tax is hereby imposed on the storage, use or other consumption in the city of tangible personal property purchased from any retailer on and after the operative date of the ordinance codified in this article for storage, use or other consumption in said territory at the rate of three-quarters of one percent 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.

Sec. 8-72. - Adoption of provisions of state law.

Except as otherwise provided in this article 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 hereby adopted and made a part of this article as though fully set forth herein.

Sec. 8-73. - Limitations on adoption of state law and collection of use taxes.

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

- a) Wherever the State of California is named or referred to as the taxing agency, the name of this city shall be substituted therefore. 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 city or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of the ordinance codified in this article.
 - (3) 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:
 - 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 said provision of that code;
 - (4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.
- b) The word "City" 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.

Sec. 8-74. - 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 transactors permit shall not be required by this article.

Sec. 8-75. - 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 Sales 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 this state, the United States, or any foreign government;
 - (2) Sales of property to be used outside the city which is shipped to a point outside the city, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the city shall be satisfied:
 - (A) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance



with 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-city 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-city and declaration under penalty of perjury, signed by the buyer, 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 pursuant to a contract entered into prior to the operative date of the ordinance codified in this article;
 - (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 the ordinance codified in this article;
 - (5) For the purposes of subsections (b)(3) and (b)(4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to 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 article, the storage, use or other consumption in this city 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 pursuant to the laws of this state, 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 of the State of California;
 - (3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance codified in this article;
 - (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 prior to the operative date of the ordinance codified in this article;
 - (5) For the purposes of subsections (c)(3) and (c)(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 pursuant to 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 subsection (c)(7) of this section, a retailer engaged in business in the city 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 city or participates within the city 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 city or through any representative, agent, canvasser, solicitor, subsidiary, or person in the city under the authority of the retailer;
 - (7) "A retailer engaged in business in the city" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of 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 city.
- (d) Any person subject to use tax under this article may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to 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. 8-76. - Amendments to state law.

All amendments subsequent to the effective date of the ordinance codified in this article to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and 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 article, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this article.



Sec. 8-77. - 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 or the city, or against any officer of the state or the city, to prevent or enjoin the collection under this article, 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. 8-78. - Refunds and credits; suits and legal proceedings.

- (a) Refunds of and credits for any tax paid pursuant to this chapter may be made only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
- (b) Suits and proceedings for the recovery of any amount alleged to have been erroneously or illegally determined or collected pursuant to this chapter may be maintained in any court only as provided for in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. A judgment shall not be rendered in favor of the plaintiff in any action brought against the State Board of Equalization to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.

Sec. 8-79 - Severability.

If any provision of this ordinance or the application thereof 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 thereby.

Sec. 8-80 - Effective Date and Submission to Voters.

This ordinance relates to the levying and collecting of City transactions and uses taxes and shall take effect immediately. However, no tax imposed by this ordinance shall be effective unless that tax has been approved by a majority of the voters of the City as required by Section 2(b) of Article XIII C of the California Constitution and applicable law.

Sec. 8-81 - Sunset of Tax and Termination.

The tax imposed by this Chapter shall be imposed for seven years from the Operative Date of this tax as defined in section 8-66 and, thereafter shall no longer be imposed.

SECTION 2. Savings Clause. If any section, subsection, part, clause, sentence or phrase of this Ordinance or the application thereof is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the validity of the remaining portions of this Ordinance, the application thereof and the tax imposed shall not be affected thereby, but shall remain in full force and effect it being the intention of the People to adopt each and every section, subsection, part, clause, sentence or phrase regardless of whether any other section, subsection, part, clause or phrase or the application there is held to be invalid or unconstitutional.

SECTION 3. The foregoing Ordinance was approved by the following vote of the People of the City of Colusa on November 8, 2016.

YESES:

NOES:

The foregoing Ordinance was adopted by Declaration of the vote at the November 8, 2016 election by the City Council of the City of Colusa on , 2016:

AYES:

NOES:

ABSENT:

ABSTAIN:

TOM REISCHE, MAYOR

Attest:

Form approved:

SHELLY KITTLE, City Clerk

RYAN R. JONES, City Attorney

