



## Board Report

**File #:** 2016-0935, **File Type:** Motion / Motion Response

**Agenda Number:** 10

### FINANCE, BUDGET AND AUDIT COMMITTEE JANUARY 18, 2017

**SUBJECT: ADMINISTRATION OF MEASURE M SALES AND USE TAX**

**ACTION: APPROVE RESOLUTIONS AND AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR ADMINISTRATION OF MEASURE M SALES AND USE TAX**

#### RECOMMENDATION

CONSIDER:

- A. ADOPTING the **Resolution authorizing LACMTA Officials to execute and sign an agreement with the State Board of Equalization for implementation of Measure M**, Attachment A;
- B. APPROVING agreement to set-up systems to administer and operate Measure M, Attachment B, at a one-time cost up to \$175,000; the funds are included in the FY17 budget;
- C. APPROVING agreement to provide on-going administration and operation of Measure M, Attachment C;
- D. ADOPTING the Resolution authorizing examination of Measure M sales tax records by Metro and audit consultant staff, Attachment D; and
- E. AUTHORIZING the CEO or his designee to take all actions necessary to achieve the foregoing.

The attachments are in substantially final form.

#### ISSUE

On November 8, 2016, Los Angeles County voters approved Measure M, officially titled Los Angeles County Transportation Improvement Plan. The State Board of Equalization ("SBOE") requires the approval of resolutions and execution of certain agreements in order for them to set up their systems and collect the Measure M sales tax beginning on July 1, 2017.

The preparation agreement, Attachment B, requires that Metro reimburse SBOE one time up to \$175,000 for its costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for SBOE

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staff and for taxpayers and other appropriate and necessary preparatory costs to administer the Measure M ordinance.

**DISCUSSION**

We are required by the California Revenue & Taxation Code and the Measure M Ordinance to contract with the SBOE to administer and collect the Measure M sales and use taxes for Metro. The attached resolutions and agreements, Attachments A, B, and C authorize Metro and SBOE to perform all functions incident to the administration and operation of the Measure M Ordinance.

In order to recover transaction and use taxes incorrectly allocated to other jurisdictions, LACMTA must examine Los Angeles County businesses' quarterly sales tax reports and file claims with the State Board of Equalization (SBOE) when errors are noted. MuniServices is the firm hired by Metro to audit transaction and use tax receipts and we must give them authorization to examine Measure M tax records, Attachment D. MuniServices is only paid a percentage (currently 11%) of monies recovered by their audits.

**DETERMINATION OF SAFETY IMPACT**

Approval of this item will result in no impact on safety.

**FINANCIAL IMPACT**

The one time costs of the preparation agreement, up to \$175,000 is included in the FY17 budget and will be paid from Measure R Administration funds. In accordance with Measure M and SBOE procedures, the SBOE's ongoing administration costs (approximately 1.1% of gross receipts) will be deducted from the sales tax proceeds before they are remitted to Metro.

**ALTERNATIVES CONSIDERED**

We are required by the California Revenue & Taxation Code and the Measure M Ordinance to contract with the SBOE to administer and collect the Measure M sales and use taxes for Metro.

**NEXT STEPS**

Execute the agreements with the SBOE.

..Attachments


**ATTACHMENTS**

Attachment A - Resolution authorizing the Chief Executive Officer to execute the agreements with the SBOE

Attachment B - Agreement for preparation to administer and operate Measure M Attachment C - Agreement for the administration of Measure M

Attachment D - Resolution authorizing the examination of Measure M tax records

Prepared by: Mary E. Morgan, Assistant Treasurer, (213) 922-4143  
Donna R. Mills, Treasurer, (213) 922-4047  
Reviewed by: Nalini Ahuja, Chief Financial Officer, (213) 922 3088



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Phillip A. Washington  
Chief Executive Officer



The foregoing resolution was introduced and adopted at a regular meeting of the Los Angeles County Metropolitan Transportation Authority held on January 26, 2017, by the following vote, to wit:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

DATED: \_\_\_\_\_

ATTEST: (s) \_\_\_\_\_  
Chair

(s) \_\_\_\_\_  
Board Secretary

ATTACHMENT B

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE  
DISTRICT'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the Los Angeles County Metropolitan Transportation Authority (hereinafter called "District"), and the State Board of Equalization (hereinafter called the "Board"), do agree as follows:

1. The Board agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the County and whose ordinance has been adopted by the District.

2. District agrees to pay to the Board at the times and in the amounts hereinafter specified all of the Board's costs for preparatory work necessary to administer the District's transactions and use tax ordinance. The Board's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Board's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Board. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the District.

4. Any dispute as to the amount of preparatory costs incurred by the Board shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

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5. Preparatory costs incurred by the Board shall be billed by the Board periodically, with the final billing within a reasonable time after the operative date of the ordinance. District shall pay to the Board the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

6. The amount to be paid by District for the Board's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization  
P.O. Box 942879, MIC: 27  
Sacramento, California 94279-0027  
Attention: Administrator,  
Local Revenue Branch

Communications and notices to be sent to District shall be addressed to:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza. MS 99-21-2  
Los Angeles, California 90012  
Attention: Treasurer

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer District's transactions and use tax ordinance has been completed and the Board has received all payments due from District under the terms of this agreement.

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
Donna Mills  
Treasurer

By \_\_\_\_\_  
Administrator

ATTACHMENT C

**AGREEMENT FOR STATE ADMINISTRATION  
OF DISTRICT TRANSACTIONS AND USE TAXES**

The Los Angeles County Metropolitan Transportation Authority (hereafter called "District") has adopted, and the voters of Los Angeles County have approved by the required majority vote, the Los Angeles County Traffic Improvement Plan Transactions and Use Tax Ordinance (hereinafter called "Ordinance") a copy of which is attached hereto. To carry out the provision of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the State Board of Equalization, (hereinafter called the "Board") and the District do agree as follows:

**ARTICLE I  
DEFINITIONS**

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Public Utilities Code Section 130350.7, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "District Ordinance" shall mean the District's Transactions and Use Tax Ordinance referred to above and attached hereto, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

**ARTICLE II  
ADMINISTRATION AND COLLECTION  
OF DISTRICT TAXES**

**A. Administration.** The Board and District agree that the Board shall perform exclusively all functions incident to the administration and operation of the District Ordinance.

**B. Other Applicable Laws.** District agrees that all provisions of law applicable to the administration and operation of the State Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the District Ordinance. District agrees that money collected pursuant to the District Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may



## ATTACHMENT C

be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Board pursuant to Article IV of this Agreement, and transmitting to District the amount to which District is entitled.

### **C. Transmittal of money.**

1. For the period during which the tax is in effect, and except as otherwise provided herein, all District taxes collected under the provisions of the District Ordinance shall be transmitted to District periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax, whether by District's self-imposed limits or by final judgment of any court of the State of California holding that District's ordinance is invalid or void, all District taxes collected under the provisions of the District Ordinance shall be transmitted to District not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the District designated and authorized by District. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

**D. Rules.** The Board shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the District Ordinance and the distribution of the District taxes collected thereunder.

**E. Preference.** Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Board shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and District transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and District as their interests appear.

**F. Security.** The Board agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be

## ATTACHMENT C

available for the payment of the claims of the District for District taxes owing to it as its interest appears. The Board shall not be required to change the terms of any security now held by it and District shall not participate in any security now held by the Board.

**G. Records of the Board.** When requested by resolution of the legislative body of the District under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the District to examine the records of the Board, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the District, pertaining to the ascertainment of transactions and use taxes collected for the District. Information obtained by the District from examination of the Board's records shall be used by the District only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

**H. Annexation.** District agrees that the Board shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Board. The notice shall include the name of the county or counties annexed to the extended District boundary. In the event the District shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the District showing the area annexed and the location address of the property nearest to the extended District boundary on each side of every street or road crossing the boundary.

ATTACHMENT C

**ARTICLE III**  
ALLOCATION OF TAX

**A. Allocation.** In the administration of the Board's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Board, to all districts with which the Board has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Board, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund, or credit applies.

**B. Vehicles, Vessels, and Aircraft.** For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Board in determining the place of use.

**ARTICLE IV**  
COMPENSATION

The District agrees to pay to the Board as the Board's cost of administering the District Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Board for the District.

ATTACHMENT C

**ARTICLE V**  
**MISCELLANEOUS PROVISIONS**

**A. Communications.** Communications and notices may be sent by first class United States mail to the addresses listed below or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

Communications and notices to be sent to the Board shall be addressed to:

State Board of Equalization  
P.O. Box 942879, MIC: 27  
Sacramento, California 94279-0032

Attention: Administrator  
Local Revenue Branch

Communications and notices to be sent to the District shall be addressed to:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, MS 99-21-2  
Los Angeles, California 90012

Attention: Treasurer

**Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.**

**B. Term.** The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on July 1, 2017. This Agreement shall continue until December 31 next following the expiration date of the District Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the District Ordinance and has received and disbursed all payments due under that Ordinance.

**C. Notice of Repeal of Ordinance.** District shall give the Board written notice of the repeal of the District Ordinance not less than 110 days prior to the operative date of the repeal.

**ARTICLE VI**  
ADMINISTRATION OF TAXES IF THE  
ORDINANCE IS CHALLENGED AS BEING INVALID

**A. Impoundment of funds.**

1. When a legal action is begun challenging the validity of the imposition of the tax, the District shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II.C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the District shall transmit to the Board the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

**B. Costs of administration.** Should a final judgment be entered in any court of the State of California, holding that District's Ordinance is invalid or void and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Board may retain all payments made by District to Board to prepare to administer the District Ordinance.

2. District will pay to Board and allow Board to retain Board's cost of administering the District Ordinance in the amounts set forth in Article IV of this Agreement.

3. District will pay to Board or to the State of California the amount of any taxes plus interest and penalties, if any, that Board or the State of California may be required to rebate or refund to taxpayers.

4. District will pay to Board its costs for rebating or refunding such taxes, interest, or

ATTACHMENT C

penalties. Board's costs shall include its additional cost for developing procedures for processing the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Board's staff for use in making these rebates or refunds and any other costs incurred by Board which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Board's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Board. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by District.

6. Any dispute as to the amount of costs incurred by Board in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Board in connection with such refunds shall be billed by Board on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding District's Ordinance invalid or void becomes final. Thereafter Board shall bill District on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. District shall pay to Board the amount of such costs on or before the last day of the succeeding month and shall pay to Board the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Board costs incurred in making those refunds.

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY.

STATE BOARD OF EQUALIZATION

By \_\_\_\_\_  
Donna Mills  
Treasurer

By \_\_\_\_\_  
Administrator

**RESOLUTION NO. \_\_\_\_\_**

**A Resolution Authorizing the Examination of Transactions (Sales) and Use Tax Records**

**WHEREAS**, pursuant to Ordinance No. 16-01 of Los Angeles County Metropolitan Transportation Authority (hereinafter called “District”) and Section 7270 of the Revenue and Taxation Code, the District entered into a contract with the State Board of Equalization to perform all functions incident to the administration and operation of the Transactions and Use Tax Ordinance; and

**WHEREAS**, the District deems it desirable and necessary for authorized representatives of the District to examine confidential transactions and use tax records of the State Board of Equalization pertaining to transactions and use taxes collected by the Board for the District pursuant to that contract; and

**WHEREAS**, Section 7056 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from, the transactions and use tax records of the Board;

**NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:**

**Section 1.** That the following officers or employees of the District or other officers or employees designated in writing by the Chief Executive Officer to the Board are hereby appointed to represent the District with authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the District by the Board pursuant to the contract between the District and the Board:

- Chief Financial Officer
- Treasurer
- Assistant Treasurer
- Debt Manager
- Senior Investment Manager
- Principal Financial Analyst
- Senior Financial Analyst
- Financial Analyst

The information obtained by examination of Board records shall be used only for purposes related to the collection of the District’s transactions and use taxes by the Board pursuant to the contract.

**Section 2.** That MuniServices is hereby designated to examine the transactions and use tax records of the Board of Equalization pertaining to transactions and use taxes collected for the District by the Board. The entity designated by this section meets all of the following conditions:

- a) has an existing contract with the District to examine those transactions and use tax records;

ATTACHMENT D

- b) is required by that contract to disclose information contained in, or derived from those transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records after that contract has expired.

**BE IT FURTHER RESOLVED** that the information obtained by examination of Board records shall be used only for purposes related to the collection of District's transactions and use taxes by the Board pursuant to the contracts between the District and Board.

**Section 3.** That this resolution supersedes all prior transactions and use tax resolutions of the Los Angeles County Metropolitan Transportation Authority adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

Introduced, approved and adopted this 26th day of January, 2017.

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Attest)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)