

Town of San Anselmo
Staff Report
December 16, 2013

For the meeting of January 14, 2014

TO: Mayor and Members of the Town Council

FROM: Daria Carrillo, Finance and Administrative Services Director

SUBJECT: Sales Tax Resolution

RECOMMENDATION

That Council approve the attached resolution, authorizing the Town Manager to execute agreements with the State Board of Equalization for implementation of a local transactions and use tax.

BACKGROUND

On August 5, 2013, the Town Council approved a resolution and proposed ordinance calling an election which was held on November 5, 2013 submitting to the voters an ordinance enacting a one half percent transaction and use tax for general purposes for a period of ten years.

The voters approved the ordinance as a result of the November 5, 2013 election. In order for the Board of Equalization to implement the tax approved by the voters, the attached resolution is required. This resolution authorizes the Town Manager to execute the Agreement for Preparation to Administer and Operate Town's Transactions and Use Tax Ordinance and the Agreement for State Administration of Town Transactions and Use Taxes. These two agreements are also attached.

As stated in the Agreement for Preparation, the preparatory costs shall not exceed \$175,000. Staff contacted the Board of Equalization for clarification of these costs and was informed that the costs include staff time, operation expenses, data processing time, printing and postage cost associated with the notification of taxpayers regarding the Special Taxing Jurisdiction. By law, the maximum cost is \$175,000. However, according to the Board of Equalization, the actual amount charged is typically less than \$175,000, particularly in smaller cities and counties. Also affecting the cost is how many new Special Taxing Jurisdictions are implemented concurrently. When a number of new Special Taxing Jurisdictions are implemented at the same time, the fee is lower due to efficiencies achieved through group implementation. In the past three years, costs have ranged from \$16,000 to \$137,000. An actual estimate of the cost is not available at this time.

The Agreement for State Administration references the cost of administering the Town Ordinance on page 4 of the agreement. The Board of Equalization estimated that 1% of revenue will be the cost to administer a .50% tax rate.

CONCLUSION

The resolution and agreements are required by the Board of Equalization to implement the transaction and use tax approved by the voters.

Daria Carrillo
Finance and Administrative Services Director

Attachment #1: Resolution # _____, Resolution of the Town Council Authorizing the Town Manager to Execute Agreements with the State Board of Equalization for Implementation of a Local Transactions and Use Tax

Attachment #2: Agreement for Preparation to Administer and Operate Town's Transactions and Use Tax Ordinance

Attachment #3: Agreement for State Administration of Towns Transactions and Use Taxes

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF SAN ANSELMO
AUTHORIZING THE TOWN MANAGER TO EXECUTE
AGREEMENTS WITH THE STATE BOARD OF EQUALIZATION FOR
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX.**

WHEREAS, on August 5, 2013 the Town Council approved Ordinance No. 1091 amending the Town Municipal Code and providing for a local transactions and use tax; and

WHEREAS, the State Board of Equalization (Board) administers and collects the transactions and use taxes for all applicable jurisdictions within the state; and

WHEREAS, the Board will be responsible to administer and collect the transactions and use tax for the Town; and

WHEREAS, the Board requires that the Town enter into a “Preparatory Agreement” and an “Administration Agreement” prior to implementation of said taxes, and

Whereas, the Board requires that the Town Council authorize the agreements;

NOW, THEREFORE BE IT RESOLVED by the Town Council of the Town of San Anselmo that the “Preparatory Agreement” attached as Exhibit A and the “Administrative Agreement” attached as Exhibit B are hereby approved and the Town Manager is hereby authorized to execute each agreement.

* * * * *

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
TOWN'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 Town of San Anselmo, hereinafter called *Town*, and the STATE BOARD OF EQUALIZATION, hereinafter called *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 Town and whose ordinance has been adopted by the Town.

2. Town 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 Town'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 Town.

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.

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. Town 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 Town 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
Sacramento, California 94279-0032
Attention: Administrator, RAAS

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

Town of San Anselmo
525 San Anselmo Avenue
San Anselmo, CA 94960

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 Town's transactions and use tax ordinance has been completed and the Board has received all payments due from Town under the terms of this agreement.

TOWN OF _____

STATE BOARD OF EQUALIZATION

By _____
(Signature)

By _____
Dario Romano, Administrator
Return Analysis and Allocation Section

Debra Stutsman
(Typed Name)

Town Manager
(Title)

(Rev. 11/02)

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

The Town Council of the Town of has adopted, and the voters of the Town of San Anselmo (hereafter called "Town" or "District") have approved by the required majority vote, the Town of San Anselmo Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions 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 Town 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 Revenue and Taxation code Section 7285.9, and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "Town Ordinance" shall mean the Town's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No 1091, 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 TOWN TAXES**

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

B. Other Applicable Laws. Town 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 Town Ordinance. Town agrees that money collected pursuant to the Town Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may 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 Town the amount to which Town 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 Town Ordinance shall be transmitted to Town 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 Town's self-imposed limits or by final judgment of any court of the State of California holding that Town's ordinance is invalid or void, all district taxes collected under the provisions of the Town Ordinance shall be transmitted to Town not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the Town designated and authorized by the Town. 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 Town 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 Town 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 available for the payment of the claims of Town 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 Town 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 Town under section 7056 of the Revenue and Taxation Code, the Board agrees to permit authorized personnel of the Town 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 Town, pertaining to the ascertainment of transactions and use taxes collected for the Town. Information obtained by the Town from examination of the Board's records shall be used by the Town only for purposes related to the collection of transactions and use taxes by the Board pursuant to this Agreement.

H. Annexation. Town 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 Town boundary. In the event the Town 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 Town showing the area annexed and the location address of the property nearest to the extended Town boundary on each side of every street or road crossing the boundary.

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

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
Sacramento, California 94279-0032
Attention: Administrator, RAAS

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

Town of San Anselmo

525 San Anselmo Avenue

San Anselmo, CA 94960

Attention: Town Manager

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 April 1, 2014. This Agreement shall continue until December 31 next following the expiration date of the Town Ordinance, and shall thereafter be renewed automatically from year to year until the Board completes all work necessary to the administration of the Town Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. Town shall give the Board written notice of the repeal of the Town 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 Town 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 Town 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 Town'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 Town to Board to prepare to administer the Town Ordinance.

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

3. Town 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. Town will pay to Board its costs for rebating or refunding such taxes, interest, or 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 Town.

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 Town's Ordinance invalid or void becomes final. Thereafter Board shall bill Town on or before the 25th of each month for all costs incurred by Board for the preceding calendar month. Town 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.

TOWN OF

STATE BOARD OF EQUALIZATION

By _____
(Signature)

By _____
Dario Romano, Administrator
Return Analysis and Allocation Section

Debra Stutsman
(Typed Name)

Town Manager
(Title)