

A Comparison of Business License and Transient Occupancy Tax Policies Between Counties with Similar Populations in California

Synopsis

Santa Cruz County, along with eight other counties of similar population, has implemented a transient occupancy tax (TOT). Santa Cruz County is one of only two of these counties that have not implemented a business license fee or tax in its unincorporated area. This report concludes it would be beneficial to implement a regulatory business license rather than a revenue-raising business license.

Background

The state budget package of 1990-1991 reduced county revenues. In exchange, the state granted counties the authority to levy a business license tax, among other taxes and fees. Transient Occupancy Tax (TOT) and Business License fees represent two potential sources of local tax revenue that the state neither mandates nor takes away from local government.

Transient Occupancy Tax: The Transient Occupancy Tax (TOT) is enabled under state law with rates determined by local tax ordinances. The revenues generated are unrestricted. However, some local governments direct its use for tourism or business development. Local governments may impose the TOT on persons staying 30 days or less in a hotel, inn, motel, tourist home, non-membership campground or other lodging facility. Occasionally, a Redevelopment Agency may impose the tax.

Santa Cruz County initiated its TOT in 1964. Today it represents over 8% of County tax revenues.

Business License: Business License tax or fee traditionally is enabled under state law with rates determined by local government. The tax or fee is usually based on gross receipts or is levied at a flat rate. Sometimes it is based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors.

The tax or fee may be levied for two purposes:

- “Regulatory” fees may be levied only to cover the costs of regulation. In this case no voter approval is required.
- “Revenue” raising tax fees require a vote of the public.

If the proceeds are earmarked for general revenue purposes, a majority vote is required for approval. If the proceeds are earmarked for specific purposes, a two-thirds vote is required for approval.

The business license fee is used by many communities as a tool to manage zoning, ensure predictable land use, cross check sales tax and TOT accounts, as well as to assist the community in promoting and marketing its business opportunities.

Santa Cruz County has enacted a Business License Tax in its unincorporated areas. On June 28, 1991 the Santa Cruz County Board of Supervisors unanimously approved Ordinance No. 4138 and a County Code Chapter 4.02, which imposed a Business License Tax for businesses operating in the unincorporated areas of the County. However, the County never put this license tax into effect. This license tax was enacted to raise revenue for general governmental purposes of the county and not for regulatory purposes.

At the same time the Supervisors enacted, and the county put into effect, a Utility Tax without voter approval. A long line of cases held that Article II, Section 9 of the California Constitution excluded from the voters' right of referendum any referendum to repeal local taxes. Several cases specifically held that the voter approval provisions of Proposition 62 violated this Constitutional provision with regard to local, general and special taxes. Ultimately the California Supreme Court ruled that both utility taxes and business license taxes require approval by the voters. Voters reinforced this by passing Proposition 218 in 1996. Therefore, the county cannot put into effect the existing revenue-raising Business License under Chapter 4.02 without voter approval.

All incorporated cities in Santa Cruz County have revenue-raising business licenses for general use.

Scope

Because of the importance of and sensitivity to tax policy, particularly during economic downturns, the Grand Jury chose to:

- Examine and compare the policy, fee structure and enforcement of TOT and business license fees and taxes of Butte, Marin, Merced, Monterey, Placer, San Luis Obispo, Santa Barbara, Santa Cruz and Tulare counties.
- These counties have similar population sizes as Santa Cruz County.

- Solicit the views of local business organizations.
- Review the issues of Santa Cruz County and its Business License and TOT policy with county officials.

Sources

Interviewed:

Butte County officials.
Marin County officials.
Merced County officials.
Monterey County officials.
Placer County officials.
San Luis Obispo County officials.
Santa Barbara County officials.
Santa Cruz County officials.
Tulare County officials.

Reviewed:

Marin County Web site.
Merced County Web site.
Santa Cruz County Web site.
Santa Clara County Web site.
David Biddle, "Enforcement of Commercial Recycling," Recycling Today,
August 19, 2001.
Runyan Associates, Survey for the California Tourism Bureau.
Dan Runyan Associates, California Transient Occupancy Tax by Jurisdiction, 2002.
Mid County Post, 12 August, 2003.
Pillsbury Wintrop, State/Local Tax Bulletin (December 1996).

Findings

1. All nine counties reviewed collect TOT and have similar collection policies and results. TOT varied from 8% to 10.5% in the counties surveyed.
2. Policies on Business Licenses vary considerably from county to county. For example, no Business License is required in Santa Cruz County or Monterey County; a nominal "regulatory" Business License fee of \$15 per year is charged in San Luis Obispo, while a sophisticated revenue-raising tax in Marin County has a schedule determined by the type of business and annual sales.

3. Merced County recently initiated a Business License. The supervisors of Merced County determined that a regulatory license would better enable the county to keep track of businesses in its unincorporated area. Through the use of data obtained from the administration of a regulatory business license, the county can offer marketing and promotional information to its businesses.
4. A county's decision to implement a TOT or a Business License fee is influenced by the population and business density of unincorporated areas. Many California counties have their dense urban populations located almost entirely within the boundaries of incorporated cities and have no significant urban or commercial areas within their unincorporated areas.
5. Santa Cruz County has several dense or suburban population centers in its unincorporated areas with a significant number of businesses ranging from retail, services, industrial to home-based. Aptos, Ben Lomond, Boulder Creek, Felton, Live Oak and Soquel are examples of such unincorporated areas of the county. It is not unusual to find similar kinds of businesses where one must pay for a Business License in a city and another, a few blocks away, does not because it is in an unincorporated area.
6. A significant percentage of Santa Cruz County businesses are outside incorporated city boundaries. This information is based largely on membership addresses obtained from business associations established to serve local neighborhoods or countywide businesses.
7. Most business associations in the county view any new tax or fee on local businesses with caution. Some businesses are struggling to survive. Data indicates that the new growth of businesses is expected to be largely in the unincorporated areas as opposed to incorporated cities.
8. Presently Santa Cruz County administrators get much of the business data for planning purposes from the State Employment Development Department. It regularly publishes information about California's labor market. This includes economic development and planning information, industry and occupational characteristics, trends and wage information. Specific county information is consolidated without separating unincorporated areas. The county issues land use permits whose limits are determined by the particular zoning restrictions. Other sources of data include United Way's Community Assessment Project, Small Business Administration and private sources such as Dunn and Bradstreet.

9. The comparison of nine counties is summarized in approximations in the table below.

Comparison of Nine Counties

TOT and Business Licenses in Unincorporated Areas

County Population (total)	TOT	# of Bus.	Annual TOT Revenues	Business License	# of Licenses	Annual Business License Revenues
Butte (208,800)	9.2%	21	\$36,800	\$49	regulatory 20	\$980
Marin (248,900)	10%	100	\$1,579,000	\$15 to \$4,500	revenue 6,300	\$981,494
Merced (216,400)	10%	6	\$629,681	\$55-\$175 Number of employees	regulatory 1200- 1500 est.	\$250,000 est.
Monterey (408,000)	10.5%	75	\$13,475,750	No general business license	NA	NA
Placer (261,500)	8%	378	\$8,200,000	\$107 -- \$127 \$16 renewal	Revenue 7,600	\$249,000
San Luis Obispo (252,000)	9%	160	\$4,600,000	\$15/yearl	Regulatory 3,800	\$57,000
Santa Barbara (405,700)	10%	30	\$5,145,000	Type of Business & Gross Receipts \$25-\$1,200+	Regulatory 850	\$80,000
Santa Cruz (258,500)	10%	113	\$3,889,000	No General Business License	NA	NA
Tulare (375,800)	10%	46	\$878,271	No General License: Special Licenses	Regulatory 63	\$6,400

10. Marin County uses Business Licenses to cross reference TOT rolls and its sales tax accounts.

11. The Midcounty Post reported on August 25, 2003 an example of a business in Capitola that was several years delinquent in paying its TOT obligation. Capitola

had previously filed a lien against the property. When Capitola withheld the Business Permit/License it was successful in collecting the delinquent TOT.

12. Existing Santa Cruz County Ordinance No. 4138 and County Code Chapter 4.02 do not allow for collection of business related information and regulation.
13. Santa Cruz County cannot put into effect the existing revenue-raising Business License under Chapter 4.02 without voter approval.
14. Santa Cruz County has restrictions and requires special permits for selected special businesses in the unincorporated area. The most common businesses that require permits from county departments include ambulance service, card rooms, day care, hazardous materials/waste, kennels, nursing homes and public pools/spas/camps. These permits are generally obtained at initiation of the business one time and are not renewed annually.
15. Santa Cruz County issues use authorizations or permits in accordance with regulation of a zone district. Approval is required for certain uses including agriculture, residential, industrial and commercial. Generally the Planning Department issues approval permits as part of applications to construct buildings such as a barn, or residence or commercial building. Permits are issued once without requiring annual renewal. Fees are charged on an hourly basis if the site is previously not permitted. Otherwise user approvals for existing master occupancy permit locations or new businesses replacing an existing similar business may be renewed over the counter for a nominal fee and are required once in the life of the business.
16. Several communities throughout the U.S. require the completion of a recycling plan as a requirement of the annual Business License.

Conclusions

1. The recent economic downturn and state fiscal crisis have left local governments with few sources of revenue not determined by state mandates, either legislative or initiative.
2. Implementing a Business License in larger counties that have dense urban populations with contiguous city boundaries would be nonproductive. However, Santa Cruz County has several dense or suburban population centers within its unincorporated areas with businesses that currently escape a business license. Enacting a business license fee in these areas would level the playing field with businesses in the incorporated areas.

3. Without a County Business License it is difficult to determine the employment, extent, numbers and types of businesses within Santa Cruz County but outside incorporated areas. The county cannot plan effectively for its future without knowing which businesses are in the county and their dynamics year to year. Predictable land use policy is enhanced with specific business license data.
4. Local government's ability to act during this general economic downturn is largely mitigated by the state and referendum requirements. However County Supervisors may initiate a "regulatory" Business License and fees without a tax referendum. The County Supervisors will need to present the benefits to existing businesses. Implementing any new fee on businesses during a business recession will require careful consideration and leadership from our County Supervisors.
5. The data available with a Business License can be an effective tool in enforcement of other taxes including sales taxes and TOT.
6. Traditionally an ordinance and subsequent county code are not left on the books if they are not in effect. By definition if they are on the books, they are assumed to be in effect. Leaving Ordinance No. 4138, County Code Chapter 4.02 on the books is confusing and inappropriate.
7. The county's reliance on data from the State Employment Development Department, United Way Community Assessment Project, Small Business Administration and private sources such as Dunn and Bradstreet is limited to general usage and is neither timely nor specific.
8. The Business License can be an effective tool to enforce recycling programs that may be initiated for commercial businesses.

Recommendations

1. The Santa Cruz County Board of Supervisors should rescind the existing Business License Ordinance No. 4138 and County Code Chapter 4.02.
2. The Board of Supervisors should implement a regulatory Business License for all businesses in the unincorporated areas of the county. It should be emphasized that this recommendation assumes a nominal fee to cover administrative costs only as opposed to a revenue generating tax.
3. Data gathered from a regulatory Business License including types, names and locations of businesses should be made available to all interested individuals and business associations. The Board of Supervisors should encourage private business associations to use this data for their own marketing and promotion activities.

4. The information obtained about the type, size and growth of businesses in the unincorporated area of the county should be considered when developing the County General Plan.
5. If the Board of Supervisors is unsure of local support for the recommended regulatory business license it should consider a ballot initiative to affirm its support.

Responses Required

Entity	Findings	Recommendations	Respond Within
Santa Cruz County Board of Supervisors	1 - 13	1 - 4	90 days (September 30, 2004)