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**AB-1838 Local government: taxation: prohibition: groceries.** (2017-2018)

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**Assembly Bill No. 1838**

**CHAPTER 61**

An act to add and repeal Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[ Approved by Governor June 28, 2018. Filed with Secretary of State June 28, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1838, Committee on Budget. Local government: taxation: prohibition: groceries.

Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions. The California Constitution also authorizes a charter city to levy local taxes to raise revenues for local purposes, subject to restrictions imposed by that city's charter or preemption in matters of statewide concern.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. That law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit those taxes to the city or county.

This bill, on and after the effective date of this chapter and until January 1, 2031, would prohibit the imposition, increase, levy and collection, or enforcement by a local agency of any tax, fee, or other assessment on groceries, except as provided. This bill would allow a local agency to continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018. This bill would make inoperative on the effective date of this measure any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018.

This bill would require the California Department of Tax and Fee Administration to cease to administer and to terminate its contract to administer any sales or use tax ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries for which a court of competent jurisdiction has determined that (1) the tax, fee, or other assessment is in conflict with the prohibition set forth in this bill and is not excepted from that prohibition and (2) the tax, fee, or other assessment is a valid exercise of a city's authority under the California Constitution with respect to the municipal affairs of that city.

This bill would require a civil action with respect to the application of this measure to a tax, fee, or other assessment to be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action be speedily heard and determined. This bill would require the venue for such a civil action to be exclusively in Sacramento County.

This bill would appropriate from the General Fund \$12,000 to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of this measure on its Internet Web site.

This bill would make a legislative finding and declaration regarding the statewide concern of the promotion of uniformity in the taxation of groceries.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Chapter 1.8 (commencing with Section 7284.8) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

### **CHAPTER 1.8. Keep Groceries Affordable Act of 2018**

**7284.8.** This chapter shall be known and may be cited as the Keep Groceries Affordable Act of 2018.

**7284.9.** The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to regulate the imposition and collection of taxes and other charges on groceries comprehensively and to occupy the field to the exclusion of local action except as specifically provided in this chapter.

(b) That the promotion of uniformity in the taxation of groceries is a matter of statewide concern and, therefore, is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

**7284.10.** For the purposes of this chapter, all of the following definitions shall apply:

(a) "Alcoholic beverages" has the same meaning as that term is defined in Section 23004 of the Business and Professions Code.

(b) "Cannabis products" has the same meaning as that term is defined in Section 11018.1 of the Health and Safety Code.

(c) "Cigarettes" has the same meaning as that term is defined in Section 30121.

(d) "Electronic cigarettes" has the same meaning as that term is defined in Section 30121.

(e) (1) "Groceries" means any raw or processed food or beverage including its packaging, wrapper or container, or any ingredient thereof, intended for human consumption, including, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, carbonated and noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed, including its packaging, wrapper, or container.

(2) "Groceries" does not include alcoholic beverages, cannabis products, cigarettes, tobacco products, and electronic cigarettes.

(f) "Local agency" has the same meaning as provided in Section 6252 of the Government Code, and includes the electorate of a local agency in exercising the initiative power.

(g) "Tax, fee, or other assessment on groceries" includes, but is not limited to, a sales tax, gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, surcharge, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, supply, distribution, sale, acquisition, possession, ownership, transfer, transportation, delivery, use, or consumption thereof.

(h) "Tobacco products" has the same meaning as that term is defined in Section 30121.

**7284.12.** (a) Notwithstanding any other law, and except as provided in this section, on or after the effective date of this chapter, a local agency shall not impose, increase, levy and collect, or enforce any tax, fee, or other assessment on groceries.

(b) A local agency may continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018.

(c) Any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018, and before the effective date of this section shall become inoperative as of the effective date of this section and shall cease to be imposed, levied and collected, and enforced as of that date.

(d) This section does not prohibit the imposition, extension, increase, levy and collection, or enforcement of a tax, fee, or other assessment on groceries if both of the following apply:

- (1) The tax, fee, or other assessment is generally applicable to a broad range of businesses, business activity, or products.
- (2) The tax, fee, or other assessment does not establish or rely on a classification related to or involving groceries or a subset of groceries for purposes of establishing or otherwise resulting in a higher tax rate due to that classification.

(e) This section does not prohibit or limit any tax levied by a local agency pursuant to, or in accordance with, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(f) The California Department of Tax and Fee Administration shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries, as defined in subdivision (g) of Section 7284.10, for which a court of competent jurisdiction has determined both of the following:

- (1) The tax, fee, or other assessment is in conflict with the prohibition set forth in subdivision (a), and is not a tax, fee, or other assessment described in subdivision (b) or (d).
- (2) The tax, fee, or other assessment is a valid exercise of a city's authority under Section 5 of Article XI of the California Constitution with respect to the municipal affairs of that city.

**7284.13.** The provisions of this chapter are to be construed liberally so as to effectuate their intent, policy, and purposes.

**7284.14.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

**7284.15.** (a) A civil action with respect to the application of this chapter to a tax, fee, or other assessment shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action shall be speedily heard and determined.

(b) Venue for a civil action given preference in subdivision (a) shall be exclusively in Sacramento County.

**7284.16.** This chapter shall become inoperative on January 1, 2031, and shall be repealed as of that date.

**SEC. 2.** The sum of twelve thousand dollars (\$12,000) is hereby appropriated from the General Fund to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as added by this act, on its Internet Web site.

**SEC. 3.** This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.