
SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

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LOCAL AGENCIES: SALES AND USE TAX: RETAILERS

Prohibits a local agency, on or after January 1, 2024, from entering into, renewing, or extending sales and use tax rebate agreements with retailers in exchange for locating in their jurisdiction, and voids agreements entered into before that date on January 1, 2030.

Background

Sales and use tax. State law imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Tax and Fee Administration (CDTFA), as well as collect and remit appropriate tax at purchase and remit the amount to CDTFA. Sales tax applies whenever a retail sale occurs, which is generally any sale other than one for resale in the regular course of business. The current rate is 7.25% as shown in the table below. Additionally, cities, counties, and specified special districts may increase the sales and use tax, also known as district or transactions and use taxes.

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes
1.0625%	Local Revenue Fund (2011 Realignment)	Local governments to fund local public safety services
0.50%	State (1991 Realignment)	Local governments to fund health and welfare programs
0.50%	State (Proposition 172 - 1993)	Local governments to fund public safety services
1.25%	Local (City/County) 1.00% City and County 0.25% County	City and county general operations. Dedicated to county transportation purposes
7.25%	Total Statewide Rate	

Unless the purchaser pays the sales tax to the retailer, they are liable for the use tax, which the law imposes on any person consuming tangible personal property in the state. The use tax is the same rate as the sales tax, and also like the sales tax, must be remitted on or before the last day of the month following the quarterly period in which the person made the purchase. CDTFA collects sales taxes from retailers, deposits the state share in the General Fund, and then allocates the local share of the Bradley-Burns sales tax and any district tax to the appropriate jurisdiction.

Bradley-Burns. The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply their own sales and use tax on the same base of tangible personal property. This tax rate currently is fixed at 1.25% of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use the 1% tax to support general operations, while the remaining 0.25% is used for county transportation purposes. In California, all cities and counties impose Bradley-Burns local taxes.

Bradley-Burns taxes are allocated to the “place of sale,” which is typically the place of business of the retailer, unless the property sold is delivered to an out-of-state destination, in which case no tax is collected. CDTFA must consider specific characteristics of the retailer to correctly determine the “place of sale,” and correctly allocate sales tax revenue:

- For a retailer that has *one location in the state*, that location is determined to be the place of sale for all of its sales. CDTFA does so even if title to the property passes from seller to buyer outside of the jurisdiction of the seller, or if the property never enters the jurisdiction of the seller. For example, CDTFA would determine that all local taxes attributable to a furniture store in the City of Sacramento would be sourced to that city, regardless of where the store delivered furniture to the buyer.
- For a retailer that has *more than one location in the state*, CDTFA determines the location based on the location where principal negotiations occurred. In the above example, if a retailer has more than one location, CDTFA considers the place of sale the location where the retailer takes the order, regardless of whether they subsequently forward it to another location for delivery. For example, if a resident of the City of Davis called a furniture store in Sacramento to order a lamp, which the store shipped to Davis from its location in Vacaville, CDTFA would consider Sacramento the place of sale for purposes of allocating the local tax.
- For a retailer that has *no location in the state, but has a stock of property in the state from which it fills orders*, CDTFA considers the place of sale as the location from which the property is shipped. If a resident of the City of Davis ordered a lamp from an internet retailer that did not have a retail location in the state, but filled the order from its warehouse in Vacaville, CDTFA would consider Vacaville the place of sale.

Allocating Bradley-Burns sales taxes at the place of sale leads to competition among cities and counties to attract land uses that involve sales because they generate local revenues.

Economic development incentives. Cities and counties engage in a wide variety of economic development activities to build their tax bases. Local officials use various tactics to influence where, when, and how the private sector invests capital and improves real property:

- Regulatory tools, including general plans, zoning, and subdivision standards;
- Direct spending, including building public works projects like dams, water systems, sewers, levees, and roads, as well as grants and loans, and site preparation; and
- Tax policies, including lower rates on local taxes (such as sales taxes or property taxes) for selected taxpayers and tax abatements where officials return the revenues to the taxpayers.

Local officials sometimes use their economic development powers to induce businesses to relocate to their communities. However, state law bans cities and counties from subsidizing the

relocation of big box retailers and auto malls within the same market area (SB 114, Torlakson, 2003). State law also prohibits a local agency from entering into an agreement that would result in the payment, transfer, diversion, or rebate of Bradley-Burns local tax proceeds to a retailer if the agreement results in a reduction of revenue that is received by another local agency when the retailer continues to maintain a physical presence and location within that other local agency (SB 533, Pan, 2015).

Even with these restrictions on economic development incentives, local agencies can still offer the following types of tax sharing agreements:

- A reduction in the use tax proceeds that are distributed to the originating local agency through one or more countywide pools.
- Any agreement to pay or rebate any local use tax revenue related to a use tax direct payment permit issued under Revenue & Taxation Code (RTC) 7051.3.
- Any mutual tax revenue sharing agreement between local agencies to pay, transfer, or divert tax revenues that would be received by one local agency to another local agency, and where the agreement would not result in a rebate of those tax revenues to a retailer.
- An agreement where a retailer expands its operations into another jurisdiction, but the originating local agency receives no less revenue than if the expansion did not occur.

These agreements range in terms of (1) the level of rebate, (2) how long the retailer receives the benefit, (3) the types of jobs or services the retailer must provide in return, and (4) how long the retailer must promise to stay in the jurisdiction. Agreements typically offer between 30% to 60% of the Bradley-Burns revenue generated by the facility, for periods of time ranging up to 40 years. The City of Fresno recently entered into long-term agreements with Amazon, Nordstrom, and the Gap, and the City of Dinuba has done the same with Best Buy. The City of Cupertino has an agreement with Apple, and San Bruno has an agreement with Wal-Mart.

State Auditor and Legislative Analyst Reports. Both the California State Auditor and the Legislative Analyst's Office (LAO) have issued reports questioning the statewide benefit of economic development incentives local agencies offer to retailers for locating in their jurisdiction. The November 2017 report from the California State Auditor entitled, "The Bradley-Burns Tax and Local Transportation Funds: Changing the Allocation Structure for the Bradley-Burns Tax Would Result in a More Equitable Distribution of Local Transportation Funding," states:

"Some counties may benefit disproportionately from the Bradley-Burns tax because of the way state law currently directs the allocation of the funds. Retailers generally allocate Bradley-Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley-Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley-Burns tax, and therefore Local Transportation Fund, revenue. The State could make its distribution of Bradley-Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

Similarly, a 2007 LAO report entitled, “Allocating Local Sales Taxes,” states:

“The use of financial incentive does not result in net benefits to a broader economic region within the state. It simply shifts existing sales taxes from one jurisdiction to another—at the cost of government resources that could be used for other purposes. The counterproductive aspects of the current system could be addressed through major reforms involving either the local sales tax allocation methodology or changes in local government’s system of taxes. Both of these options would involve significant public policy trade-offs and would require changes to the state’s Constitution.”

In February 2024, the Assembly Revenue and Taxation Committee held a hearing called *Following the Money: How Local Sales Tax Revenues are Allocated Among California Cities*. At this hearing, the Committee heard from both cities that benefit from the existing allocation framework and use these tax sharing agreements, as well as cities that feel disadvantaged by the current tax allocation system.

Recent developments with tax sharing agreements. Bradley-Burns tax sharing agreements have come under renewed scrutiny. According to an article published in *Bloomberg Tax*:

“Bloomberg Tax investigations into some of the agreements found that Apple has received \$107.7 million from its hometown Cupertino, eBay Inc. has received more than \$97 million from its home base of San Jose, Walmart.com has received more than \$15 million from San Bruno tied to an e-commerce office, Best Buy Co. Inc. has received \$49.3 million from Dinuba tied to a warehouse, and Williams-Sonoma Inc. has received \$58.7 million from Shafter tied to a call center.”¹

Some of these companies with tax sharing agreements have reportedly come under scrutiny from CDTFA. This is because the businesses and CDTFA do not agree that the place of business in the jurisdiction it has the agreement with should be considered the place of sale for tax allocation purposes because principal negotiations did not occur there.² In other words, these companies may have allocated too many sales to jurisdictions where a tax sharing agreement ensured they would receive a portion of that revenue.

The author wants to place additional limits on the types of economic development incentives local agencies can offer to businesses from local Bradley-Burns sales tax revenue.

Proposed Law

Senate Bill 1494 prohibits a local agency, on or after January 1, 2024, from entering into, renewing, or extending any form of agreement that would result in the payment, transfer, diversion, or rebate of any sales and use tax revenue to any retailer in exchange for the retailer

¹ https://www.bloomberglaw.com/bloomberglawnews/daily-tax-report-state/BNA%200000018e4337da8aad8e477f7d590001?bna_news_filter=daily-tax-report-state

² <https://news.bloombergtax.com/daily-tax-report-state/lawmakers-ask-newsom-to-save-apple-ebay-hometowns-tax-deals>

locating or maintaining a place of business that serves as the place of sale if it generates revenue for another local agency.

The measure declares any such agreement that exists before January 1, 2024, to be void and unenforceable starting on January 1, 2030.

SB 1494 requires a local agency to post any such agreement that exists before January 1, 2024, on its website until it expires or is made void or unenforceable on January 1, 2030.

The measure defines its terms and makes findings and declarations to support its purposes.

Comments

1. Purpose of the bill. According to the author, “SB 1494 would address the issue of corporations manipulating our tax code. Right now, California’s broken tax system allows retailers to allocate sales tax revenue from online sales to specific distribution centers and warehouses regardless of where the sale occurred. This creates a perverse economic incentive for cities to give millions of dollars in sales tax revenue back to corporations in return for designating that municipality as the point of sale. This bill would end the exploitation of an economic tool that concentrates tax revenue among a minority of cities (at the expense of their neighbors) and instead ensures each jurisdiction gets its fair share to use tax revenue for the intended purpose of bettering the community.”

2. What’s left? SB 533 (Pan, 2015) limited some sales tax agreements. For example, if a company has a warehouse in Sacramento, but opens a sales office in Davis, it cannot enter into a tax sharing agreement with Davis if it continues to fulfill orders from the warehouse in Sacramento. However, if it moved all its operations to Davis, it would be able to enter into a tax sharing agreement with Davis. SB 1494 attempts to crack down on such an agreement. If the company moved its warehouse to Davis, but generates revenue from sales delivered to other jurisdictions throughout the state, it could not enter into a tax sharing agreement with Davis. The only opportunity remaining for a tax sharing agreement would be if a company opens a brick-and-mortar store in Davis and all its sales are in person because no revenue would come from sales delivered to purchasers in other jurisdictions.

Cities that focus their economic development efforts on warehouse and distribution centers view these agreements as valuable economic development tools that create employment and economic activity that cannot be generated any other way. Even if one of these agreements requires a significant rebate back to a retailer, that city still may be better off because it will receive more sales tax revenue than if the retailer did not locate their warehouse or distribution in their city. The Committee may wish to consider whether other economic development incentives the state does allow are sufficient to provide opportunities for cities seeking continued economic growth, particularly cities with available land and above-average unemployment rates.

3. Race to the bottom. Allowing communities to use their sales tax revenue to offer significant rebates—which can total more than half of all local sales tax revenue received—often results in shifting economic activity from one jurisdiction that needs more economic growth to another. For example, a company could decide whether to locate its new warehouse in one of two neighboring cities based on which city offers the highest tax rebate. Both may share similar economic conditions, but are pitted against each other to attract retailers with these incentives in exchange for a promise of jobs and economic activity. As the rebates grow larger and larger, the

benefits accrue more and more to the company receiving the rebate. However, both local agencies end up on the losing end. The local agency that loses the competition loses jobs, economic activity, and tax revenue. The local agency that wins the competition ends up sacrificing a portion of sales tax revenue it may have generated if the retailer had plans to locate in that jurisdiction anyway. As this race to the bottom continues, more and more tax dollars go to retailers, not to local jurisdictions. Taxpayers pay sales tax under the belief the money goes to the state and local agencies to provide services, not to provide a rebate to a corporation. Instead, retailers often receive a significant portion of the benefits of this sales tax revenue.

Businesses make decisions about where to locate based on a variety of factors, including whether or not a local agency offers them a lucrative sales tax rebate. However, it is unclear whether the offer of a sales tax rebate outweighs other factors: proximity to major transportation routes, access to particular markets, and whether a retailer already has warehouses and distribution centers in the area. Some of these businesses may have located in these communities regardless of whether or not the city offered them a rebate because these other market forces were more important than the incentive received. As a result, some local agencies may be giving away sales tax revenue they would otherwise receive to lure a retailer that already had plans to locate a facility in their jurisdiction.

4. Treating the symptom, not the disease. Both the Auditor and the LAO have suggested replacing situs-based allocation with a population based allocation system to reduce incentives for local governments to use their economic development powers to promote retail developments. The LAO also suggested that replacing local government sales tax revenues with a different tax base could achieve similar results. Yet, because Section 25.5 of Article XIII of the California Constitution prohibits the Legislature from enacting a statute that would change the method of distributing revenues derived under Bradley-Burns Uniform Local Sales and Use Tax Law, as it read on November 3, 2004, except to comply with federal law or to allow the state to participate in an interstate compact, moving away from a situs-based sales tax allocation system would require a Constitutional Amendment or enacting a new local tax scheme. While SB 1494 reduces counterproductive economic competition between local agencies, broad tax reform would be needed to address the underlying problem.

5. Retroactivity. To avoid a rush of agreements being entered into, or extended, before the bill goes into effect, SB 1494 prohibits local agencies from entering into, amending, or extending tax sharing agreements as of January 1, 2024. Additionally, SB 1494 voids agreements already in place by January 1, 2030, regardless of the term of the agreement. Previous legislative efforts to prohibit some of these agreements, like SB 533 (Pan, 2015) did not apply retroactively like SB 1494 does, so existing agreements remained in place. This would be the first time the Legislature has prohibited agreements that both parties legally entered into. Can the Legislature end these existing agreements without violating contractual rights of the local agency or the retailer? If the measure passes, the courts may decide.

6. Previous efforts. The Legislature has considered previous efforts to address the allocation of local sales taxes:

- AB 376 (Chavez, 2001), SB 1114 (Brulte, 2002), and AB 553 (Chavez, 2003) provided that for purposes of allocating the local tax on concrete batch plant sales by retailers with more than one place of business in California, the place of sale is the point of manufacture of the concrete. These bills were not enacted.

- The Legislature enacted AB 451 (Yee, 2005) to require all local tax on jet fuel sales to be allocated to the point of delivery into the aircraft, regardless of whether the jet fuel retailer has one or more places of business in California.
- SB 983 (Hernandez, 2014) sought to provide that for purposes of allocating the local tax on sales of fuel made through a card lock network, the place of sale is the point of delivery of the fuel into the vehicle. The author subsequently amended the measure for another purpose.
- SCA 20 (Glazer, 2018) sought to amend the California Constitution to provide that the retail sale of tangible personal property transacted online is consummated at the point of delivery. The bill was held in Senate Appropriations Committee.
- The Legislature enacted AB 485 (Medina, 2019) to require local agencies to publicly report specified information when providing economic development subsidies of \$100,000 or more for warehouse distribution centers.
- SB 531 (Glazer, 2019) sought to prohibit a local agency from entering into any agreement that results in a rebate of Bradley-Burns local tax revenues to a retailer in exchange for that retailer locating within that agency's jurisdiction. The Governor vetoed the measure.
- ACA 13 (Oberholte, 2019) sought to amend the California Constitution to provide that the retail sale of tangible personal property transacted online is consummated at the point of delivery. The bill was held at the Assembly Desk.
- SB 792 (Glazer, 2021) sought to require specified retailers to include with their sales tax returns a schedule that reports the gross receipts from sales of property for each local jurisdiction where it shipped or delivered to a purchaser in that jurisdiction. The Governor vetoed the measure.

7. Related legislation. AB 2854 (Irwin, 2024) requires local agencies to provide specified information relating to Bradley-Burns rebate agreements to CDTFA and publish that information on its internet website. The measure imposes penalties if the local agency does not provide this information. The measure is currently pending in the Assembly Revenue and Taxation Committee.

8. Urgency. As an urgency statute, SB 1494 must be approved by 2/3 vote of each house of the Legislature. Regular legislation takes effect on the January 1 following its passage, but urgency bills take effect as soon as they are passed, signed, and chaptered.

9. Coming and going. The Senate Rules Committee has ordered a double referral of SB 1494: first to the Senate Local Government Committee to hear issues related to local government, and second to the Senate Revenue and Taxation Committee.

Support and Opposition (3/28/24)

Support: None submitted.

Opposition: California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Manufacturers & Technology Association
California Retailers Association
California Taxpayers Association

City of Dinuba

City of Fresno

City of Ontario

City of Tracy

NAIOP, the Commercial Real Estate Development Association

United Chamber Advocacy Network

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