



REVENUE AND TAXATION POLICY COMMITTEE
Thursday, March 21, 2024
10:00 a.m.- 2:00 p.m

Marriott Burbank Airport Hotel
2500 N. Hollywood Way, Burbank

General Briefing

10:00 a.m.

Upon adjournment, individual policy committee meetings will begin.

AGENDA

I. Welcome and Introductions

*Speakers: Chair Kuldip Thusu, Council Member, Dinuba
Vice Chair Kevin Bash, Mayor, Norco*

II. Public Comment

III. State Budget Update and Discussion

Speaker: Ben Triffo, Legislative Representative, Cal Cities

Informational

IV. Legislative Agenda and Discussion

Speaker: Ben Triffo, Legislative Representative, Cal Cities

Informational/Action

- *Taypayer Protection and Government Accountability Act*
- *[Revenue and Taxation Bills](#)*
- *AB 2854 (Irwin) (Attachment A)*

Action

V. Department of Transportation: IIJA Federal Grant Update

Speaker: Ryan Greenway, Caltrans, Assistant Federal Liaison

Informational

VI. Department of Transportation: Road Usage Charge

Speaker: Laura Prehoda, Caltrans, Road Charge Program Manager

Informational

VII. City Managers Sales Tax Working Group Update (Attachment B)

Speaker: Ben Triffo, Legislative Representative, Cal Cities

Informational

VIII. Closing Remarks Adjourn

*Speakers: Chair Kuldip Thusu, Council Member, Dinuba
Vice Chair Kevin Bash, Mayor, Norco*

Next Virtual Meeting: Thursday, June 20, 9:30 a.m.-12:30 p.m.

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:

1) Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or

2) A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

**Revenue and Taxation Policy Committee
March 2024**

Staff: Ben Triffo, Legislative Representative
Betsy Montiel, Policy and Legislative Affairs Analyst

1. [AB 2854](#) (Irwin): Bradley-Burns Uniform Local Sales and Use Tax Law

Bill Summary:

This measure, as proposed to be amended, would require a local agency to annually provide to the California Department of Tax and Fee Administration (CDTFA) specified information related to any sales tax rebate agreement the agency has entered. This measure would require the agency to post the information to the local agency's website. The measure also contains monetary penalties for non-compliance.

Bill Description:

AB 2854 would require any local agency, by April 30th of each year, to post to their website, and submit to CDTFA, specified information regarding any sales tax rebate agreements the agency has entered. The information required to be disclosed under AB 2854 includes:

- The name or names of any parties to the agreement.
- The total dollar amount of rebated sales and use tax revenues received by each party to the agreement on or after the date of the execution of the agreement through and including December 31st of the calendar year immediately preceding the date of the report.
- The total dollar amount of rebated sales and use tax revenues received by each party to the agreement during the calendar year immediately preceding the date of the report.
- The date of which the agreement was originally executed, and the date on which the agreement will terminate, absent any renewal.
- The percentage of a retailer's sales and use taxes, if any, used to calculate or otherwise determine the rebated sales and use tax revenues received by each party to the agreement.
- The percentage of a retailer's sales and use taxes, if any, used to calculate or otherwise determine the rebated sales and use tax revenues received by any other person that is not a party to the agreement.

If a local agency does not post this information to their website or does not provide the information to CDTFA, CDTFA will notify the agency that it has 30 days to provide or publish the required information. If the agency fails to provide or publish the information within 30 days, the department may impose a penalty in an amount equal to the greater of 20% of any rebated sales and use tax revenues during the applicable calendar year, or \$1,000 for each day the agency fails to provide or publish the required information after receipt of the 30-day notice, whichever is greater.

Any local agency that has not been party to a sales tax rebate agreement in the immediately preceding calendar year shall, by April 30th, report this fact to CDTFA and shall be exempt from the website publishing requirement.

Background:

City Manager Sales Tax Working Group

The Sales Tax Working Group of the City Managers Department is convened to review evolving trends, explore policy implications, and identify additional data to support reform discussions. The 2022 working group convenes a diverse and representative group of California city officials dedicated to examining local government sales tax issues to provide recommendations that equitably benefit California cities, further fiscal sustainability, and strengthen the viability of the sales tax.

Throughout 2022 and 2023, the reconvened group explored existing law, regulations and practices regarding tax sourcing rules including national trends. The group has given significant attention to reforming tax sourcing rules and tax rebate agreements. The group has also identified additional issues within county pool allocation policy.

Within the suite of recommendations adopted by the previous iteration of the working group in 2018, the previous group reached consensus to limit rebate agreements as follows:

- Sales tax rebate agreements involving online retailers should be prohibited going forward as they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one.
- Any type of agreement that seeks to move a retailer from one community to another within a market area should also be prohibited going forward. Existing law already prohibits such agreements for auto dealers and big box stores.

To this end, Senator Glazer introduced [SB 531](#) in 2019, which would have prospectively banned sales tax rebate agreements between a retailer and a local agency involving Bradley-Burns Sales and Use Taxes. In 2019, Governor Newsom vetoed SB 531. In his veto message, Governor Newsom noted that:

*“Current use of these tax agreements are limited but also an important local tool that captures additional economic activity, particularly in rural and inland California cities that continue to face significant economic challenges like high unemployment rates...Therefore, **completely removing these tax options from local decision makers is the wrong approach.**” [Emphasis added]*

2022-23 Working Group Conversations on Sales Tax Sharing Agreements

Throughout late 2022 and into 2023, working group members discussed a path forward to limit sales tax sharing agreements without implementing a statewide prohibition. Although subcommittee members hold a variety of perspectives and experiences regarding the merits or flaws of sales tax sharing agreements, the subcommittee of the working group ultimately focused on how to preserve sales tax sharing agreements as an economic incentive tool while establishing parameters that reduce competition and create a fairer environment.

The working group developed the following recommendations:

- All policy changes to sales tax sharing agreements will be prospective in nature (will not affect existing agreements). However, existing sales tax sharing agreements should not have the ability to be renewed in perpetuity, i.e., term extensions that would be a loophole to avoid new requirements are prohibited.
- Institute a maximum duration of 20 years for new sales tax sharing agreements.
- Institute a rebate cap of 50% of the sales tax generated by the private business.
- Require the state to create and maintain a database and dashboard of all Economic Development Subsidy Reports on a website.
- Exclude from the county pool calculations of the local Bradley Burns 1% sales and use tax the sales tax gained from a sales tax sharing agreement that is rebated to a private business. Any changes to statute regarding sales tax sharing agreements should be prospective in nature.

Existing Law

In 2013, Governor Brown signed [AB 562](#) (Chapter 740, Statutes of 2013) which requires local agencies, beginning January 2014, to provide specified information to the public before approving any economic development subsidy of \$100,000 or more. The information is to be made publicly available on the local agency's website in the form of an Economic Development Subsidy Report.

In 2019, Governor Newsom signed [AB 485](#) (Chapter, 803, Statutes of 2019) which expanded the provisions of AB 562 specifically to warehouse distribution centers and require local governments to hold hearings and report on those subsidies. AB 485 requires local agencies to submit a report to the Governor's Office of Business and Economic Development providing specified information and would require the office to make those reports available to the public through its internet website.

AB 485 also prohibits a local agency from signing a nondisclosure agreement regarding a warehouse distribution center as part of negotiations or in the contract for any economic development subsidy.

Fiscal Impact:

Cities with sales tax rebate agreements will incur costs related to posting to their internet website the information required in the bill. Non-compliant cities will face specified penalties. No direct costs to cities that are not party to a sales tax rebate agreement.

Existing Cal Cities Policy:

From the Cal Cities Summary of Existing Policy and Guiding Principles

Reduce Competition

Prospectively, sales tax rebate agreements shall be no longer than 20 years, and shall not rebate more than 50% of the sales tax generated by the private business. Existing sales tax rebate agreements shall not have the ability to be renewed in perpetuity (i.e., term extensions that would be a loophole to avoid new requirements are prohibited). Additionally, the California Department of Tax and Fee Administration shall exclude from the county pool calculations of the local Bradley Burns 1% sales and use tax the

sales tax gained from a sales tax sharing agreement that is rebated to a private business.

There shall be a statewide database and dashboard of all Economic Development Subsidy Reports (such as sales tax rebate agreements) on a website.

Comments:

Legal Analysis of Penalties

The State has the authority to impose a penalty on a local agency for failing to comply with state law. However, two rules apply: (a) the local agency must be given notice and have an opportunity to be heard (e.g., to explain why the information has not been provided); and (b) the penalty must not be excessive.

The first rule is based on the due process clause of the Constitution, which this bill seems to violate. The bill provides the local agency with the required notice but fails to provide the local agency with an opportunity to be heard. This is a problem under the due process clause.

The second rule is based upon the "excessive fines" clause of the Constitution. In considering whether a fine is "excessive," a court considers whether the amount of the fine bears some relationship to the seriousness of the offense it is designed to punish. A fine violates the "excessive fines" clause if it is "grossly disproportionate to the gravity of the offense." A penalty of \$1,000 per day has been upheld in a variety of circumstances. However, the bill would assess \$1,000 per day or 20% of any rebated sales and use tax revenue during the applicable calendar year, whichever is greater. A court will look at the nature of the violation and the harm caused by the violation in determining whether a penalty is excessive. It could be argued that failing to provide this information does not "harm" anyone; and that the information is available through a Public Records Act request.

Protections for Complying

AB 2854 provides the State with protections from violating existing law found in Revenue and Taxation Code Section 7056 (which limits the dissemination of information about a business' sales). Local agencies will need to be protected from violating this section of law when they comply with the bill.

Support

None on file

Opposition

None on file.

Staff Recommendation:

Staff has no recommendation. However, the City Managers Sales Tax Working Group recommends supporting the bill if amended to address the issues raised in the comments above.

Committee Recommendation:

Board Recommendation:

E-Commerce Definition

- An internet sales transaction, or other similar digital-electronic media, processed digitally and delivered to a consumer from a warehouse or fulfillment location. This transaction may be fulfilled in-state or out-of-state and does not require human intervention.
- For purposes of this definition, consumer means a person or a group who intends to purchase goods or products primarily for personal, social, family, household and similar needs, who is not directly related to business activities.
- For purposes of this definition, a warehouse or fulfillment location is the location where a product or good is stored before it begins shipment to a consumer after an order is placed and is not a consumer facing retail location.

		California			Texas			Illinois		
		Local Sales Tax/Bradley-Burns Tax:	Local Taxes are sales and use taxes imposed by local jurisdictions, usually cities or counties, under the Bradley-Burns Uniform Local Sales and Use Tax Law.	Franchise Tax (FT):	Franchise Tax is a privilege tax imposed on each taxable entity formed or organized in Texas or doing business in Texas. FT is based on a taxable entity's margin. (Sec. 171, Tax Code; Rule 3.593).	Illinois (ROT):	ROT is a tax imposed on retailers engaged in the occupation of selling tangible personal property at retail in Illinois. It includes the taxes levied under the Retailers' Occupation Tax Act and all applicable local retailers' occupation taxes collected by the Illinois Department of Revenue (IDOR) (35 ILCS 120).			
Term:	Other Variations:									
E-commerce	Internet Transactions/Online Sales	Internet transactions are generally designed and intended to be processed online, without direct human intervention until the property is picked, packed, and shipped at the storage location. As such, a storage location is often the only place of business that participates in an internet transaction.			No statutory or regulatory definition.			No statutory or regulatory definition.		
		California			Texas			Illinois		
	In-State Retailers - Place of Business:	One Location	Multiple Locations	Regulation:	One Location	Multiple Locations	Statute:	One Location	Multiple Locations	Statute:
Origin	Situs/Point-of-Sale	1. Local sales tax is usually allocated to the jurisdiction where the place of sale is located.	2. If more than one place of business of the retailer participates in the sale, the sale occurs at the place of business where the principal negotiations are carried.	CDTFA, Regulation 1802	1. For retailers with one place of business in the state, retail sales are consummated at that place of business.	2. For retailers with more than one place of business in the state the sale is consummated: a) From the location which the retailer ships or delivers the item to the point designated by the purchaser. b) Where the purchaser takes possession or removes the item from a place of business of the retailer.	Section 321.203, Tax Code	Total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the IL location at which the sales are determined to occur.	The retailer is engaged in the business of selling in the taxing jurisdiction where its predominant and most important selling activities take place.	86 Ill. Adm. Code 270.115
Sales Tax Allocation = Place of Business		X	X		X	X		X		
	In-State Retailers - No Place of Business:			Regulation:			Statute:			Statute:
Destination	Purchaser's Location/Point-of-Delivery	The location to which the property is shipped is generally presumed to be the place of first functional use. Therefore, Local use tax is allocated to countywide pool.			A sale of a taxable item is consummated at the location in this state to which the item is shipped or delivered or at which possession is taken by the customer if transfer of possession of the item occurs at, or shipment or delivery of the item originates from, a location in this state other than a place of business of the retailer			The total state and local retailers' occupation tax rate calculated for a sale using the rate in effect at the IL location to which the tangible property is shipped or delivered.		
Sales Tax Allocation = Purchaser's Location					X			X		
Use Tax = County Pool		X								
Physical Presence	Economic Nexus	A) To constitute participation, an activity must serve some real purpose and involve some genuine physical human interaction with the sale from that location. B) Participation for internet transactions applies when the property/good is picked, packed, and shipped at the storage location. As such, a storage location is often the only place of business that participates in an internet transaction.			Section 6203, Revenue and Taxation Code	Retailers with an economic nexus of \$500,000 must pay TX Franchise Tax.			IL Tax Remittance Threshold is \$100,000 or 200+ transactions.	
Participation	Business Activity/Genuine Interaction				CDTFA, Regulation 1620	Consumption of sale.			Retailers' Occupation Tax Act links the retailer's tax liability to where it principally enjoys the benefits of government services. Participation includes a retailer engaging in three or more primary selling activities in one location in the state. Sales tax is remitted to that location where the primary selling activities occurred. Participation is determined by an activity test	
Receive and Receipt	Consumption of Sale	A) The taking of possession of tangible person property. B) Making first use of services/goods.				For orders received at a place of business of the seller in Texas: A) An order is received when all the necessary information from the purchaser necessary to determine the seller's acceptance. B) Location from where the product shifts shall not be used to determine where the order is received by the seller.			No statutory or regulatory definition.	

Marketplace Definitions					
	California		Texas		Illinois
	?		Sales Tax Allocation = Purchaser's Location		Sales Tax Allocation = Purchaser's Location
Term:	Marketplace Facilitator Act				Leveling the Playing Field for Illinois Retail Act
Marketplace	"Marketplace" means a physical or electronic place, including, but not limited to, a store, booth, internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property for delivery in this state regardless of whether the tangible personal property, marketplace seller, or marketplace has a physical presence in this state. Section 6041 - 6041.6, Revenue and Tax Code		"Marketplace" means a physical or electronic medium through which persons other than the owner or operator of the medium make sales of taxable items. The term includes a store, Internet website, software application, or catalog. Section 151.0242, Tax Code		"Marketplace" means a physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items. [35 ILCS 120/1]
Marketplace Facilitator/Provider	"Marketplace Facilitator" means a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a marketplace operated by the person or a related person and who does both of the following:		"Marketplace Provider" means a person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.		"Marketplace Facilitator" means a person who, pursuant to an agreement with an unrelated third-party marketplace seller, directly or indirectly through one or more affiliates, facilitates a retail sale by an unrelated third-party marketplace seller by:
	Conditions:				Conditions:
	1. Directly or indirectly, through one or more related persons, transferring acceptance between buyer and seller, owning or operating the infrastructure (physical/electronic) that brings buyers and sellers together, providing virtual currency, software development or research and development activities related to any of the following activities:	2. Payment processing services, Fulfillment or storage services, listing products for sale, setting process, branding sales as those of the marketplace facilitator, order taking, providing customer service or accepting or assisting with returns or exchanges.	1. Certify to each marketplace seller that the marketplace provider assumes the rights and duties of a seller or retailer under this chapter with respect to sales made by the marketplace seller through the marketplace		1. Listing or advertising for sale, by the marketplace seller in a marketplace, tangible personal property that is subject to tax under the Retailers' Occupation Tax Act 2. Directly or indirectly, through agreements with 3rd parties, collecting payment from the customer and transmitting that payment to the marketplace seller regardless if the facilitator receives compensation.
Marketplace Seller	"Marketplace Seller" means a person who has an agreement with a marketplace facilitator and makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by a marketplace facilitator.		"Marketplace Seller" means a seller, other than the marketplace provider, who makes a sale of a taxable item through a marketplace.		"Marketplace Seller" means a person that makes sales through a marketplace operated by an unrelated third-party marketplace facilitator and who has obtained a certification from the marketplace facilitator.
Remote Retailer	No statutory or regulatory definition.		1. Engages in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items; or 2. solicits orders for taxable items by mail or through other media and under federal law is subject to or permitted to be made subject to the jurisdiction of this state for purposes of collecting the taxes imposed by this chapter.		a retailer that does not maintain within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this State.

ABC Test

1st business activities

National City Headquarters	Riverside Payments	Ontario Fulfillment	Lodi Personnel	Lake Forest Customer
A	A	A	A	A
B	B	B	B	B
C	C	C	C	C
D	D	D	D	D
E	E	E	E	E
1.1 Primary selling activities. For retailers with multijurisdictional locations (including online sales), sales will be allocated to where three of the following primary activities occurred:				
A	Location where sales personnel are authorized to solicit customers and bind the seller into the sale.			
B	Location where the seller takes action that binds it to the sale: 1) acceptance of purchase orders 2) buyer's acceptance 3) other actions that bind the seller to that sale.			
C	Location where payment is tendered and received, or where invoices are issued for each sale.			
D	Location of inventory from where the retailer's inventory is sold at the time of its sale or delivery.			
E	Location of the retailer's headquarters, which is the principal place from which the business of selling tangible property is directed or managed.			

2nd business activities

National City Headquarters	Riverside Payments	Ontario Fulfillment	Lodi Personnel	Lake Forest Customer
A	A	A	A	A
B	B	B	B	B
C	C	C	C	C
D	D	D	D	D
E	E	E	E	E
F	F	F	F	F
1.2 Secondary selling activities. If primary selling activities occur in multiple jurisdictions, but no more than two has primary selling activities – the following are applied:				
A	Location where marketing and soliciting occur.			
B	Location where the seller engages in activities necessary to procure goods for sale.			
C	Location of retailer's offices, executives, or employees with authority to set prices or determine terms of a sale.			
D	Location where purchase orders or other contractual documents are received when purchase orders are accepted.			
E	Location where title passes.			
F	Location where the retailer displays goods to prospective customers.			

- Business activities are then applied to the location of the headquarters and the location of the inventory/fulfillment.
- The sales tax will be allocated to the jurisdiction with more activities that fall under the 2 tests.