California State Board of Equalization,
Legislative Division

LEGISLATIVE BULLETIN

SALES AND USE TAX LEGISLATION
1998

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Assembly Bill 66 (Baca, et al.) Chapter 1027

Allocation of local sales tax on sales of jet fuel

Tax levy; effective September 30, 1998; operative January 1, 1999. Amends Section 7205 of, and adds Section 7204.03 to, the Revenue and Taxation Code .

This bill specifies that, for purposes of allocating the local tax on sales of jet fuel negotiated in California by retailers with more than one place of business in this state, the place at which the retail sale of that jet fuel is consummated for purposes of allocating that local tax is the point of delivery of the fuel into the aircraft.

The bill specifies, however, that if the point of delivery of the jet fuel is at an airport that is owned or operated by a city, county, or city and county, outside that airport's geographic boundary, the allocation of the local tax on those jet fuel sales shall be shared equally between the city, county, or city and county in which the airport is located and the city, county, or city and county that owns or operates the airport, except in the case of San Francisco International Airport (SFO) and the Ontario Airport. For the SFO airport, the bill requires the Board to transmit 1/2 of the local sales tax to the City and County of San Francisco and the other half to the County of San Mateo. For Ontario Airport, the bill requires the Board to transmit the 1 percent city tax to the City of Ontario and the 1/4 percent county tax to San Bernardino County.

Sponsor: Assembly Member Joe Baca

Law Prior to Amendment

Under existing law, the Board administers the Bradley-Burns Uniform Local Sales and Use Tax Law which authorizes counties to impose a local sales and use tax of 1 1/4 percent on tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under current law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent. (Most cities' ordinances provide for a city tax rate equaling one percent; however, there are several cities that have ordinances providing for a small fraction less than 1 percent).

Of the 1 1/4 percent Bradley-Burns local tax rate, the 1/4 percent portion is allocated to the county in which the sale or use of the property occurred for purposes of funding county transportation projects.

Section 7205 of this Bradley-Burns law specifies the "place of sale" for purposes of the local sales tax. Under this section, in general, all retail sales in California are consummated at the place of business of the retailer. **If a retailer has *only one* place of business** in California, the local sales tax derived from sales consummated at that place of business is transmitted by the Board to the city, county, or city and county in which the retailer's place of business is located. If title to the property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside the city, county, or city and county in which the retailer's place of business is located, or that the property sold is never within the city, county, or city and county in which the retailer's place of business is located. Therefore, if a jet fuel dealer in California has only one place of business, and that place of business is at an airport, under current law, the local tax derived from the sale of jet fuel by that dealer would be transmitted to the city, county, or city and county in which the airport is located. If that place of business is somewhere other than an airport, the local tax derived from the sale of jet fuel would be transmitted to the city, county, or city and county in which the dealer's place of business is located, regardless of the fact that the purchaser takes title to the fuel at an airport.

If a retailer has more than one place of business in the State, the place or places at which the retail sales are consummated for purposes of allocating the local tax is determined in accordance with regulations adopted by the Board.

Regulation 1802, "Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes," interprets and makes specific the laws governing the "place of sale" for purposes of allocating local tax revenues to local jurisdictions. Under paragraph (2) of subdivision (a), **if a retailer has *more than one* place of business** in this state which participates in the sale, the sale occurs at the place of business where the *principal negotiations* are carried on. Therefore, for purposes of the local tax, an aircraft fuel provider in this state with more than one place of business, that makes sales of fuel to an aircraft operator, is required to allocate the local tax to the local taxing jurisdiction in which that sale was principally negotiated. If the sale was principally negotiated in a city or county other than where the fuel was actually delivered into the aircraft, the local tax is required to be allocated to that city and county in which the sale was principally negotiated.

Background:

Up until July 29, 1991, sales of fuel and petroleum products to aircraft common carriers were exempt from 80 percent of the 1 1/4 percent Bradley-Burns Uniform

Local Tax when the fuel was used outside the county in which the sale was made. This exemption had traced back to the days when the local tax rates were not uniform. At that time, the common carriers and public utilities contended that the various local tax rates produced competitive disadvantages and disruptions of trade because of the varying rates among local jurisdictions. This exemption was repealed by SB 180 (Stats. 1991, Ch. 236) as part of the budget compromise.

With respect to jet fuel transactions, airlines generally negotiate their purchases at the headquarters of the fuel supplier. Usually, airlines offer a bid with the oil companies. When a bid is awarded, the contract is generally executed at the headquarters of the oil company. Thus, the local tax is allocated to the taxing jurisdiction in which those negotiations occurred.

When the partial local tax jet fuel exemption was repealed, one jet fuel vendor began erroneously allocating the local tax on its sales of jet fuel to the location of the tank farms located at each airport. In most cases, the tank farms and airports are located in the same local jurisdiction. However, at the San Francisco International Airport, the airport itself (where the fuel is delivered into the aircraft) is located in an unincorporated area of San Mateo County, and the tank farms are located in the City of South San Francisco. The vendor was erroneously allocating the tax to the jurisdiction where they believed the tanks were located - the County of San Mateo. A local tax consultant filed a request for reallocation for the local tax, claiming that the local tax should be allocated to the City of South San Francisco, since that is the jurisdiction where the tanks are located. When the Board reviewed the local tax consultant's claim, the Board concluded that, in fact, the tax should have actually been allocated to the jurisdiction in which the principal negotiations took place - the City and County of San Francisco. The Board then reallocated the local tax in accordance with the law.

On November 8, 1996, the County of San Mateo filed a lawsuit against the Board of Equalization, the City and County of San Francisco, and Does One through Ten, seeking damages for breach of contract and violation of state statute relating to the distribution of local tax attributable to sales of jet fuel described above. The case is currently pending at the Alameda County Superior Court.

Comments:

1. **Purpose.** The purpose of this bill is to address issues and concerns related to the current rules applicable to the allocation of the local tax on sales of jet fuel.

2. **Cities and counties would share in cases of fuel sold at multijurisdictional airports.** Other than specific provisions regarding fuel sold at the San Francisco and Ontario airports, the bill provides that when an airport is located in a

different city or county than the city or county that owns or operates that airport, the cities and counties would share equally in the local tax revenues. Based on a review of the 111 airports in California that sell jet fuel, the following airports would qualify as "multijurisdictional airports" (note, all the airports listed below are located within a city that is located within the owning/operating county, e.g. the Brackett Field Airport is located within the City of La Verne which is located within the County of Los Angeles):

Name of Airport	**Owner/Operator**	**Location**	**City Tax Rate**
Brackett Field Airport	County of Los Angeles	LaVerne	1%
El Monte Airport	County of Los Angeles	El Monte	1%
Gen. Wm. J. Fox Airport	County of Los Angeles	Lancaster	1%
Apple Valley Airport	County of San Bernardino	Apple Valley	1%
Needles Airport	County of San Bernardino	Needles	1%
Gillespie Field Airport	County of San Diego	El Cajon	1%
McClellan-Palomar Arpt.	County of San Diego	Carlsbad	1%
San Carlos Airport	County of San Mateo	San Carlos	.95%
Camarillo Airport	County of Ventura	Camarillo	.967%
Oxnard Airport	County of Ventura	Oxnard	.967%

2. **How does the multijurisdictional airport allocations work?** For all the airports listed above, the 1 1/4 local sales tax on the jet fuel sold at each of these airports is required to be allocated as follows: the local tax on sales of jet fuel at the city-imposed rate (shown above) will be split equally between the city in which the airport is located and the owning and operating county. In addition, the *county* will additionally be entitled to the balance of the local tax (which would be the case regardless of the "multijurisdictional" language incorporated into the bill). As an example, if $1,000 worth of jet fuel was sold at San Carlos Airport, the total local sales tax at the 1 1/4 percent rate would amount to $12.50 and would be allocated as follows: the City of San Carlos would receive $4.75 ($1,000 x .95% x 1/2), and the balance of $7.75 would be transmitted to the County of San Mateo.

3. **The cities listed above with multijurisdictional airports will lose a portion of their revenues to the counties.** Based on telephone conversations with representatives of the multijurisdictional airports listed above, we have learned that the jet fuel sales at these airports are made almost entirely on a "cash and carry" basis. That is, purchasers of fuel at these airports generally do not have prepaid accounts with fuel vendors with multiple locations, such as those that the commercial airlines have where "principal negotiations" become a critical issue. Instead, purchasers primarily use credit cards for their purchases of jet fuel or maintain a fuel purchasing account with fixed base operators operating out of the airport. Therefore, under current law, the local sales tax on sales of jet

fuel at these airports is allocated in a similar manner as the "wing tip" concept of allocation (the city in which the airport is located receives 100 percent of the local tax revenue at the city-imposed rate; the county receives the balance). This is so because the "negotiations" for the sale of jet fuel actually occur at the airport in which the fuel is pumped into the plane, causing the airport to be deemed the "place of sale" for purposes of allocating the local sales tax.

However, since the bill requires that the local tax be split between the city in which the airport is located and the county that owns and operates the airport, the bill requires that one-half of the city-imposed rate of the local tax that would otherwise go to the city be allocated instead to the county.

5. **Ontario will get the local sales tax revenues at the 1 percent city tax rate; San Bernardino County will get the 1/4 percent county rate.** There are 100 airports that sell jet fuel in California that are not "multijurisdictional airports." With regard to the local tax on sales of fuel at these 100 airports, the bill provides for a "wing-tip" method of allocating the local sales tax. The Ontario Airport is located within the City of Ontario which lies within San Bernardino County. It is owned and operated, however, by the City of Los Angeles. If not for the express provisions in the bill relative to the Ontario Airport, it, too, would qualify as a "multijurisdictional airport." However, this bill provides for a similar local tax allocation for sales of fuel made at the Ontario Airport as the bill provides for all 100 airports in California that sell jet fuel that are not "multijurisdictional airports." Therefore, for the 100 non-multijurisdictional airports, and the Ontario Airport, the bill specifies that, with respect to sales of jet fuel at those airports, the 1 percent local sales tax will all be allocated to the cities in which these airports are located (if not located in a city, the 1 percent will be allocated to the county), and the 1/4 percent portion will be allocated to the respective counties in which the airports are located.

6. **Airport authorities, airport districts and other entities owning or operating airports do not qualify as "multijurisdictional airports."** The bill provides that only those cities and counties that own or operate airports that are located in a different city or county could qualify as a "multijurisdictional airport." There are currently several public as well as private entities that either own or operate airports that are not cities or counties. As an example, the Burbank Airport is owned and operated by the Burbank, Pasadena, and Glendale Airport Authority. Since this authority is not a city or county, the Burbank Airport does not qualify as a "multijurisdictional airport." Therefore, under the provisions of the bill, no portion of the local sales tax on sales of jet fuel delivered into the aircraft at Burbank Airport can be allocated to that authority. Instead, the 1 percent local sales tax revenues on sales of jet fuel at the airport must be

allocated entirely to the City of Burbank; the 1/4 percent portion of the revenues must be allocated to the County of Los Angeles.

7. **Is there a constitutional concern?** A question has arisen as to the constitutionality of splitting local sales tax from sales of jet fuel delivered to aircraft at multijurisdictional airports between the local entity in which the airport is physically located and the local entity owning that airport. The argument against allowing this would be that a local entity cannot extend the application of its sales tax ordinance to a sale that does not occur within its jurisdiction.

Assembly Bill 821 (Takasugi) Chapter 612
Taxpayers' Bill of Rights II

Effective January 1, 1999. Amends Sections 11002 and 11003 of the Government Code, and amends Sections 7084, 7091, and 7097 of, and adds Sections 6593.5, 6832, 6964, and 7094.1 to, the Revenue and Taxation Code.

This Board-sponsored measure enhances the California Taxpayers' Bill of Rights as follows:

1. **Codifies existing administrative practice with respect to the Board's acceptance of documents from private delivery services as timely mailed. (Government Code Sections 11002 and 11003)**
2. **Authorizes the Board to abate interest in cases where a taxpayer's failure to pay tax is due to an unreasonable error or delay by an employee of the Board, and in cases where a taxpayer's failure to pay use tax on a vehicle or vessel was a direct result of an error by the Department of Motor Vehicles in calculating the use tax. (Section 6593.5)**
3. **Authorizes the Board to enter into a written installment payment agreement with a taxpayer for the payment of any amounts due, and specifies the conditions in which the Board may terminate that installment payment agreement. (Section 6832)**
4. **Waives the imposition of interest on erroneous refunds issued to taxpayers by the Board until 30 days after the date the Board mails a notice of determination for repayment of the erroneous refund. (Section 6964)**
5. **Makes clarifying changes to the Board's education and information program. (Section 7084)**
6. **Provides that, in cases where it is alleged Board staff is unreasonable, Board staff must show that its position was substantially justified, and specifies that a claim for reimbursement of fees and expenses in cases where the action taken by the Board staff was unreasonable must be filed within one year of the date that the Board's decision becomes final. (Section 7091)**
7. **Authorizes the Board to return levied property in cases where the levy on the property was not in accordance with the law, where a taxpayer has entered into and is in compliance with an installment payment agreement, or where the return of the property will facilitate collection of tax liability or is in the best interest of the taxpayer. (Section 7094.1)**
8. **Authorizes the Board to release or subordinate a lien if the Board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interests of the state and the taxpayer. (Section 7097)**

Background:

The Harris-Katz California Taxpayers' Bill of Rights was enacted in 1988 (Ch. 1574), effective January 1, 1989, to place certain guarantees in the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. The Katz-Harris Taxpayers' Bill of Rights, also enacted in 1988, placed similar guarantees in the California Personal Income Tax Law and the Bank and Corporation Tax Law.

On July 30, 1996, Congress enacted the federal Taxpayer Bill of Rights II to provide an additional set of taxpayer protections under the federal income tax laws. As a conformity measure, the Franchise Tax Board sponsored AB 713 (Ch. 600, Stats. 1997) to conform many of its bill of rights provisions to the 1996 federal changes.
Assembly Bill 821 is sponsored by the Board of Equalization to conform California sales and use tax laws to the Franchise Tax Board's AB 713.

Assembly Bill 836 (Sweeney, et al.) Chapter 890
Transactions and use taxes - Administrative cost recovery

Effective January 1, 1999. Amends Section 7273 of the Revenue and Taxation Code.

This bill limits the amount the Board of Equalization may charge for services in administering local Special Taxing Jurisdiction's transactions and use taxes and stipulates that the Board may not reduce positions that are responsible for the generation or receipt of revenues as a result of this limitation.

Sponsor: Alameda County Transportation Authority and Self Help Coalition of Counties

Law Prior to Amendment:

Existing law, Section 7273 of the Transactions and Use Tax Law authorizes the Board of Equalization (Board) to charge an amount for its administration of the transactions and use tax for Special Taxing Jurisdictions (STJs). The current reimbursement formula is in compliance with the provisions of AB 102 (Ch. 75, 1993) which had the effect of implementing the recommendations contained in the Auditor General's March 1992 report entitled "The Board of Equalization Needs to Adjust Its Model For Setting Reimbursement Rates for Special Tax Jurisdictions." This report noted that the state's policy is to recover the full costs of STJ administration. Currently, STJs are charged a fixed fee for the year, which is divided into four payments and deducted during each of the four quarterly allocation/warrants processes. Section 7273(a)(3) provides that the amounts charged may be adjusted two fiscal years later to reflect the difference between recovered and actual costs.

In General:

The costs incurred by the Board to administer the Sales and Use Tax Program are attributable to four basic service elements: 1) registering taxpayers, 2) processing returns and payments, 3) auditing taxpayers' records, and 4) collecting delinquent taxes. The Board receives funding for these costs from two sources the General Fund and local reimbursements.

The administrative cost assessments currently paid by STJs include the district's share of direct and shared costs, defined as follows:

Direct costs: Costs associated with each of the tax programs developed based on workload standards and other cost measurements.

Shared costs: Costs that benefit the state, cities/counties, and STJs individually and jointly but cannot be separately identified and associated with each entity.

The current administrative cost assessments are based on workload standards and exclude certain costs related to counties that do not have any STJs.

Background:

The Bureau of State Audits conducted an audit of the administrative cost allocation methods used by the state to assess STJs and released their report, titled "Board of Equalization: Policies and Cost Assessment Methods for Special Tax Jurisdictions Need Reconsideration," in January 1996. The report did not identify any Board activities that could be changed to significantly improve efficiency beyond those already identified by the Board. However, the report did make the following three policy recommendations:

- State policy makers should examine whether STJs should bear a percentage of the infrastructure costs associated with the Board's administration of sales taxes.

- STJs should not be charged for partial costs of administering the two statewide half-cent sales taxes.

- Costs should be allocated to individual STJs based on key indicators of workload, such as the number of permits and the number of returns, rather than a proportion of revenue.

The author introduced AB 2847, a similar bill, during the 1995-96 Session. AB 2847 proposed phasing-out STJ payment of shared costs over a three-year period. The bill, on which the Board was neutral, died in the Assembly Appropriations Committee.

This bill is similar to AB 2316 (Cannella) from the 1995-96 Session, which died in the Assembly. The Board was neutral on the bill.

This bill is also similar to the provisions of SB 375 (Sher and Assembly Member House) that would limit the Board's administrative charges for the Stanislaus County Library Transactions and Use Tax to 5 percent of its annual revenues. The Board took a position of neutral, point out problems on SB 375. The Governor vetoed SB 375, stating in his veto message, in pertinent part:

"The provision that would cap the costs that could be charged by the BOE to administer Stanislaus County's transactions and use tax for libraries could set an inadvisable and costly precedent. It will likely lead to similar requests for administrative cost relief by other local taxing jurisdictions and could result in state money being used to subsidize local tax collection."

Comments:

1. **Purpose.** The intent of this bill is to limit the amount the Board may charge STJs for administration.

2. **A cut in Board funding as stipulated by this bill would impact all Board-related taxes.** If this proposal is enacted without the necessary funding to recover any reimbursement shortfalls, all tax programs administered by the Board could be adversely affected. This bill stipulates that the Board may not reduce positions that are responsible for the generation or receipt of revenues. In addition to ensuring that taxes and fees are properly paid, the Board also seeks to deliver a high level of service to individuals and companies doing business in California through education and information-sharing programs. These services indirectly assist in the generation or receipt of revenues by maintaining the integrity of the tax collection programs. Therefore, it would be extremely difficult to reduce positions within the Board that are NOT in some way responsible for the generation or receipt of revenues. Even those positions that might be considered by some to be unrelated to the generation or receipt of revenues are still vital to the integrity of the tax programs and important to individuals and companies doing business in California.

3. **This bill would implement some of the suggestions contained in the Bureau of State Audit's January 1996 report, and not the Auditor General's March 1992 report.** Board staff have opined on the following suggested policy changes included in the Bureau of State Audit's January 1996 report:

   a) Should the Board charge STJs for shared costs? This is a state policy issue. The current model used to allocate administrative costs between the state, cities and counties (Bradley-Burns), and STJs is based on full cost recovery, with the intent to allocate shared costs among all jurisdictions who benefit. In its 1992 report, the Auditor General noted that the state's policy is to recover the full costs of STJ administration, and is consistent with Section 8752 of the State Administrative Manual. Revenue and Taxation Code 7273(a)(3) enacts that policy into law. The 1996 Bureau of State Audit's report recognized the STJs claim that they should only be charged the incremental or direct costs of administering their programs, but that the Board's model was equally defensible and the decision should be left to the Legislature.

Any costs shifted away from STJs would need to be recovered from another source. Based on the 1995-96 model, shared costs assessed to cities and counties (Bradley-Burns) totaled $37 million and shared costs assessed STJs totaled $20 million. If STJs are exempted from paying shared costs, cities and counties may likewise seek the same exemption.

b) Should the Board charge STJs for costs associated with the two statewide half-percent taxes? The 1996-97 impact to STJs for the shared costs of the Local Revenue Fund (LRF) and the Local Public Safety Fund (LPSF) is approximately $2.6 million. Under current law, the Board is precluded from charging administrative costs associated with these funds, since both funds are protected by statute. The LPSF is additionally given constitutional protection from these administrative charges. Beginning in 1996-97, STJs will no longer be assessed for these costs. Therefore, the state, cities, and counties (Bradley-Burns) will share in these additional costs.

c) Should the Board charge STJs based on key indicators of workload, rather than proportion of revenue? A further refinement of the cost allocation recommendations contained in the March 1992 Auditor General report is the suggestion to allocate costs to individual STJs within cost centers based on key workload indicators, such as number of permits and number of returns. This recommendation was implemented by the Board beginning with the 1996-97 assessments. While it does not have an impact on the total cost of administering STJ taxes, individual STJs will experience cost fluctuations. Based on the cost model for 1996-97, 16 STJs will benefit from the change, 13 will experience increased costs, and two will remain unchanged as compared to the previous model.

4. **The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed.** Charging STJs based on a percentage of revenues is arbitrary, since the cost of administering the tax is not related to the revenues that the tax generates. As previously stated, the Board has adopted the Bureau of State Audits' recommendation to distribute individual STJ costs by workload. This bill would conflict with that recommendation.

Assembly Bill 1243 (Granlund, et al.) Chapter 15
Allocation of local use tax pooled revenues

Urgency statute; effective April 7, 1998. Amends Section 7051.3 of the Revenue and Taxation Code.

This bill deletes subdivision (f) of Section 7051.3 of the Sales and Use Tax Law, as added by SB 110 (Ch. 702 , Stats. 1997), that requires the Board to allocate the local use tax pooled amounts to local jurisdictions based on their proportionate share of direct allocations of use tax.

Sponsor: ***League of Cities and the California Manufacturers Association***

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 1/4 percent local tax.

Under current law, cities are authorized to impose a sales and use tax rate of up to 1 percent. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1 1/4 percent.

The revenue from the local sales tax is generally allocated directly to the local jurisdiction (i.e. the unincorporated area of the county, city, city and county, or redevelopment agency) where the sale took place. The Board collects these taxes primarily from remittances by retailers, and relies on retailers to segregate taxable sales by location in order to determine the correct local sales tax allocation.

Under current law, when goods are shipped by the retailer from an out-of-state location directly to the purchaser in this state and title passes out of state, the transaction is subject to state, local, and (if applicable) district use tax. Current law requires out-of-state retailers who are registered with the Board to collect California use tax on sales of property to California consumers and remit it to the Board. The local use tax revenue is allocated to the jurisdiction in which the use of the property occurs based on schedules submitted by these out-of-state retailers. To the extent that the use tax cannot be distributed to the jurisdiction of use directly, it is distributed through the medium of "pools" (Sales and Use Tax Regulation 1802(c)). Section 7051.3 of the Sales and Use Tax Law, as added by SB 110 (Stats. 1997, Ch. 702), among other things, requires the Board each quarter to allocate the local use tax not reported to a county, city, city and county, or redevelopment agency (i.e. the use tax in the "pools"), based upon the distribution of local use tax that has been reported to the county, city, city and county, or redevelopment agency in the prior quarter (i.e. the use tax that has been directly allocated by means of use tax direct payment permits, returns, et al.).

In General:

Through administrative action, the Board has had a long-standing policy of generally distributing a portion of local tax revenues through countywide pools and statewide pools for transactions that cannot be easily identified to a specific location. However, through both administrative and legislative action, these pools have begun to "drain." The pooling process uses 58 countywide pools and one statewide pool. The countywide pools prorate local tax in the pool to each city in the county and the unincorporated portion of the county, in the same relation that each jurisdictions' retail sales bear to the total of all retail sales in the county. The statewide pool prorates local tax to all cities and counties in the state in the same relation that each city and county's retail sales bear to all of the cities and counties in the state. The actual allocations from the pools are computed on a quarterly basis.

Typical transactions assigned to countywide pools include use tax from private party sales of vehicles, vessels and aircraft (which is the largest component), use tax on long term leases (other than certain vehicle leases), materials and fixtures used in construction contracts, and property shipped to consumers in this state from out-of-state vendors pursuant to orders taken from local sales offices. Minor amounts of local sales tax from itinerant merchants and vending machine operators are also in the countywide pools. The statewide pool is used primarily to allocate the local use tax from out-of-state mail order firms, many of which report the tax voluntarily. This pooling method has been used for years by the Board and has been validated by the courts. In a 1970 decision, City of San Joaquin v. State Board of Equalization, the court said the pooling system is a valid technique that "subserves the interest of all cities and counties."

Local jurisdictions are becoming increasingly reliant on the sales and use tax as a significant revenue source and some have expressed concern over the pooling concept. In response to their concerns, through its adoption of amendments to Regulation 1802, the Board has made the following changes that specifically assist in draining these countywide pools, as follows:

- The regulation specifies that, beginning July 1, 1996, with respect to auctioneers, the local tax shall be reported directly to the city, county or city and county in which the auction is held for events that result in taxable sales in an aggregate amount of $500,000 or more. (Previously, this tax would have been allocated to the countywide pool in which the auction was held.)
- For transactions of $500,000 or more, beginning July 1, 1996, the regulation specifies that when the order for property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the seller is required to report the local use tax revenues from that sale directly to the city, county, or city and county where the first functional use of the property is made (as opposed to the countywide pool).
- The regulation specifies that, operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of $500,000 or more, that person shall report the local use tax to the city, county, or city and county in which the first functional use of the property is made.

With respect to legislative action, during the 1995 Legislative Session, SB 602 (Ch. 676, Wright), changed the way the local use tax on certain automobile leases is distributed. Instead of the revenue going to the county pool in which the purchaser of the vehicle resided, SB 602 requires the local use tax be allocated directly to the local jurisdiction in which the car dealer is located.

In addition, last year, SB 110 added Section 7051.3 to the Sales and Use Tax Law to allow every person seeking to pay use taxes directly to the Board to file an application for a "use tax direct payment permit." The applicant can either be a local jurisdiction or any person who made purchases of, or who leased, tangible personal property at a cost of $500,000 or more during the calendar year immediately preceding the application.

Comments:

1. **Purpose.** This bill is intended to avoid an expensive and imprecise process specified in the law for the Board to allocate local use tax revenue to local jurisdictions.

2. **What is this process and why, if implemented, would it be so expensive and imprecise?** This process would require the Board to allocate the portion of the local use tax in the countywide pools to the city, county, city and county, or redevelopment agency (hereinafter referred to taxing jurisdictions) based on each taxing jurisdiction's proportionate share of local use tax directly allocated to it.

The process would be expensive because the use tax program has never before been isolated from the sales tax program to allow for separate collection and accounting of use tax revenues. Therefore, in order to begin to implement this process, the Board would be required to isolate these tax programs. To do so would require significant changes to the Board's automated system - it would actually require a redesign of the entire system. In addition, the Board has had an ongoing effort for several years in rewriting its sales and use tax automated processes and migrating them to the Teale Data Center. This program (referred to as the "Integrated Revenue Information System" or "IRIS") is expected to be implemented in September of 1998. To rewrite the existing automated system to accommodate the requirements of subdivision (f) would not only take over a year to implement, it could also delay the date of implementation of the new automated system which could result in significant costs - costs which would be borne by local governments.

The process would be imprecise because in order to determine each taxing jurisdictions' direct allocations of use tax, the Board must either require all 900,000 taxpayers to complete separate use tax schedules every quarter, or make estimates of these amounts. Estimating would be particularly difficult, since the Board has no basis upon which to make these estimates. A comprehensive sampling of sales and use tax returns filed by taxpayers in each taxing jurisdiction (there are roughly 560 taxing jurisdictions in California) would be required to determine the amount, if any, of the use tax directly reported to a specific taxing jurisdiction (direct allocations). However, unlike sales, purchases subject to use tax can be wildly variable. Therefore, the confidence level with estimating would be low.

In addition, with respect to purchases subject to use tax, taxpayers are only required to specify on their returns the county in which the first use of the property subject to use tax occurred. However, through the Board's automated system, direct allocations already occur (as for example local jurisdictions that have businesses with one location that report use tax would receive "direct allocations" of use tax and in cases where businesses with multiple locations include a purchase subject to use tax on their schedule of sales by business location, direct allocations of use tax will occur) and it is difficult to determine in many cases whether a direct allocation was made with the information on the return. Consequently, return information on amounts attributable to purchases subject to use tax is not necessarily a reliable source upon which to make estimates.

3. **Bill eliminates the potential negative impact in some local jurisdictions' budgets.** The provision that AB 1243 deleted (subdivision (f)), would have required the Board to allocate the pooled revenues in a way that is significantly

different than how the pooled revenues have been distributed for nearly 30 years, which could seriously impact some local communities' budgets. Under the current allocation system, the local jurisdictions receive a somewhat stable amount from the pool since the percentages that individual jurisdictions receive do not vary greatly from quarter to quarter. These pooled revenues are derived from a variety of sources. A portion is generated from the use tax reported by out-of-state retailers on sales to California consumers. However, the largest component of the use tax revenues in the pooled amounts actually stems from use tax collected by the Department of Motor Vehicles on private party sales of vehicles, vessels and aircraft. The allocation of the pooled revenues to local jurisdictions required in subdivision (f) would have provided a disproportionate distribution of these pooled revenues to those jurisdictions that have large use-tax accruing businesses.

Many taxing jurisdictions that are currently receiving these amounts through the mechanism of the pooling process could realistically no longer have received amounts through implementation of subdivision (f). Local governments have made long range plans based on anticipated local tax revenues. If this provision had not been eliminated, many cities and counties which have budgeted their expenses in anticipation of the local tax revenue they receive from the pooled amounts could have been significantly impacted.

Assembly Bill 1614 (Lempert, et al.) Chapter 351
California Internet Tax Freedom Act

Effective January 1, 1999. Amends Section 6203 of, and adds Part 32 (commencing with Section 65001) to Division 2 of, the Revenue and Taxation Code.

This bill amends Section 6203 of the Sales and Use Tax Law to delete paragraphs (5) and (8) of subdivision (c) (these paragraphs had been deleted in the 1997 Session through the enactment of SB 1102, Ch. 620, but were inadvertently added back in due to a chaptering problem brought about by AB 258 (Ch. 621)).
In addition, this bill adds Part 32 (commencing with Section 65001) to the Revenue and Taxation Code to enact the "California Internet Tax Freedom Act." It states legislative findings and declarations related to the Act, and specifies that no local government may impose, assess, or attempt to collect any tax or fee on Internet access, online computer services, or the use thereof, or a bit tax or bandwidth tax, except that prohibition does not include:

1. **Any existing tax, including any sales and use tax, business license tax, or utility user tax that is imposed in a uniform and nondiscriminatory manner, as specified.**
2. **Any cable television franchise fee on online computer services or internet Access delivered over a cable television system, except as specified.**

The bill defines "Internet," "Online Computer Services," "Internet Access," "franchise fee," "discriminatory tax," "bit tax," and "bandwidth tax."
The "California Internet Tax Freedom Act" would become inoperative January 1, 2002.

Sponsor: Honorable Johan Klehs

Law Prior to Amendment:

Existing law imposes various state income, franchise, property, and excise taxes and various user, regulatory, and franchise fees in connection with activities or property within this state.

The Board administers some of these various taxes and fees. Those administered by the Board that are directly or indirectly collected in connection with the Internet or interactive computer services include the emergency telephone users surcharge and the state, local and district sales and use taxes.

The Emergency Telephone Users Surcharge Law imposes a surcharge on amounts paid by every person in the state for intrastate telephone communication services in this state. The rate of surcharge is currently .0072 of the charges for such services. Every service supplier is required to collect the surcharge from each user at the time it collects its billings from the service user. With respect to the Internet or any interactive computer service, either a local or toll telephone call is fundamental - there is always a telephone call involved. Therefore, with respect to the Internet or any interactive computer service, any charges for local or intrastate toll calls made to a service supplier are subject to the emergency telephone users surcharge.

Under the Sales and Use Tax Law, a state and local sales or use tax is imposed on the sale or use of tangible personal property in this state, unless otherwise exempted by law. Current law does not impose a sales or use tax on the charges for the Internet or other on-line communication services, as such charges generally do not involve the transfer of tangible personal property. However, any taxable tangible personal property purchased for use in this state pursuant to an order placed through the Internet is subject to either the sales or use tax to the same extent as purchases are made through any other medium.

Comments:

1. **Purpose**. The "California Internet Tax Freedom Act" is intended to provide a reasonable and responsible tax policy in California regarding the taxation of the Internet so as to avoid any potential burdens placed on this evolving medium.

2. **Bill establishes clear guidelines as to where the lines should be drawn with respect to the taxation of Internet transactions.** The tax laws affecting the taxation of electronic commerce are ambiguous. Accordingly, the establishment of clear guidelines in this bill will eliminate any uncertainty with respect to the taxation of this new medium. Its goal is to prevent discriminatory tax treatment toward the Internet, not giving it a tax preference.

3. **This bill does not affect state or local sales and use taxes.** Under the bill, the state and local governments are allowed to impose sales and use taxes on all electronic sales, provided that the tax and its rate are the same as that which would be imposed on the transactions if it were conducted in a more traditional manner, such as over the phone or through mail order.

   Since 1935, the law has required persons who purchase tangible personal property for use in this state from out-of-state retailers to pay use tax measured by the purchase price of the property. The law has also required out-of-state retailers who are engaged in business in California to collect California use tax on sales made to California consumers. The bill does not change these laws.

Consequently, the application of sales and use tax to sales made over the Internet will not be changed by AB 1614.

4. **Board supports federal legislation.** The Board is supporting the federal "Internet Tax Freedom Act" which would place a moratorium on state and local taxes on electronic commerce.

Assembly Bill 1946 (Papan) Chapter 140
Allocation of local use tax on leased automobiles

Effective January 1, 1999. Amends Section 7205.1 of the Revenue and Taxation Code.

This bill amends the Bradley-Burns Uniform Local Sales and Use Tax Law to provide the following with respect to leases of motor vehicles:
- **If the lessor is a California new car dealer, as specified, the local use tax shall be allocated to the place of business of that dealer.**
- **If the lessor is a leasing company, as defined, the local use tax shall be allocated to the place of business of that leasing company.**
- **If the lessor is not a California new car dealer or leasing company as described, and purchases a vehicle from such a dealer or leasing company, the local use tax shall be allocated to the place of business of the dealer or leasing company from whom the lessor purchased the vehicle.**

The bill would define "leasing company" as a motor vehicle dealer (as defined in Section 285 of the Vehicle Code), that complies with all of the following:
1. **The dealer originates lease contracts as described that are continuing sales and purchases.**
2. **The dealer does not sell or assign those lease contracts that it originates.**
3. **The dealer has annual motor vehicle lease receipts of $15 million or more per location.**

Sponsor: City of San Mateo

Law Prior to Amendment:

Senate Bill 602 (Wright) was enacted in the 1995 legislative session in an effort to change the allocation of the Bradley-Burns Uniform Local Use Tax for leases of automobiles. It added Section 7205.1 to the Bradley-Burns Uniform Local Sales and Use Tax Law to provide that, when motor vehicles are leased, the local use tax would be allocated to the city in which the automobile dealership is located if the customer negotiates the lease through a dealership or if the dealership sells a vehicle to a leasing agency which in turn leases it to a consumer. Therefore, instead of the local use tax being allocated to the countywide "pool" in which the lessee of the car resides, where each taxing jurisdiction within the county receives its proportionate share of this use tax, in the case of a vehicle being leased by a new car dealer, the law provides that the tax shall be allocated to the place of business of that dealer. The law further requires that, for lessors other than new car dealers, the tax shall be allocated to the place of business of the dealer from whom that lessor purchased the vehicle, or to the countywide pool if the vehicle was purchased from a source other than a dealer.

Background:

Senate Bill 602 of the 1995 Legislative Session was introduced to aid cities with auto malls. As more customers lease, rather than purchase, cars, these cities demonstrated that they were losing to other cities the sales tax revenues they have received in prior years. The cities pointed out that they undertake the burden and responsibilities of providing services to the car dealerships and, therefore, should receive the local use tax revenues regardless of whether the car is sold or leased.

Comments:

1. **Purpose.** The purpose of this measure is to address the allocation of local use tax on certain leases of vehicles by a lessor located within San Mateo. It is our understanding that this lessor engages in wholesale fleet leasing of new passenger vehicles to commercial users. Since this lessor is apparently not a "new motor vehicle dealer (as defined in Section 426 of the Vehicle Code)," as the statute requires, the local use tax on its leases would not be allocated to its place of business under the provisions of Section 7205.1. Instead, the use tax would be allocated to the place of business of the dealer, if the lessor acquired the vehicles through the dealer, or to the countywide pool in which the lessee garages the vehicle if acquired from a source other than a dealer. This bill is intended to require the local use tax on these leases be allocated instead to the sales office of the lessor.

2. **Bill would match revenues with local service needs.** Section 7205.1 requires that lessors (other than new car dealers) allocate the local use tax to the place of business of the dealer from whom the lessor acquired the vehicle, or to the countywide pools if the vehicle was acquired from a source other than a dealer (i.e., from distributors or manufacturers). Representatives of some local jurisdictions that have large-scale passenger automobile leasing establishments have argued that the local use tax stemming from their transactions should stay within their communities, stating that they too, must bear the burden of providing services for these leases.

3. **The June 8 amendments strike clarifying definition of "motor vehicle."** Prior to the June 8, 1998 amendment, the bill contained a definition of the term "motor vehicle" as meaning passenger vehicles and light duty trucks. The purpose of that definition was to clarify that these special allocation provisions would be applicable to vehicles typically found in auto malls which is consistent with the

legislative intent of SB 602 and with the Board's current administration of the statute. (Currently the statute cross-references Section 415 of the Vehicle Code for purposes of defining "motor vehicle" which, in essence, states that a motor vehicle is any vehicle that is self-propelled. This would include such vehicles as bulldozers, golf carts, forklifts, mobile cranes, buses and truck tractors). Proponents who have requested that the clarifying definition of motor vehicles be stricken are seeking to include lessors of buses within the special allocation provisions. However, it should be noted that since buses are considered "mobile transportation equipment" (see Revenue and Taxation Code Section 6023) the allocation of the local tax on leases of these items are treated similarly as sales anyway. Accordingly, with regard to leases of buses, or any other mobile transportation equipment, the local tax is already allocated to the place of business of the lessor.

Assembly Bill 2798 (Machado, et al.) Chapter 323
Exemption for sales of non-annual plants, teleproduction and post production equipment, and space flight property

Urgency statute; effective August 20, 1998; proposed exemptions operative only if Proposition 7 at the November 3, 1998 election is defeated. Among other things, amends Section 6358 and 6380 of, and adds Section 6378 to, the Revenue and Taxation Code.

This bill will, if Proposition 7 of the November 3, 1998 general election is *defeated*, do the following (among other things unrelated to the Board):
- **Exempt from the 5 percent state sales and use tax, tangible personal property purchased by a qualified person for use in teleproduction and postproduction services, as specified.**
- **Remove the requirement that the flight originate at Vandenberg Air Force Base with respect to the sales and use tax exemption for qualified space flight property and delete the sunset language contained within the exemption.**
- **Provide a sales and use tax exemption for sales and purchases of non-annual plants that produce food for human consumption or that are to be resold in the regular course of business.**

If Proposition 7 is defeated, these provisions will become operative January 1, 1999.

Sponsors: *Senator Dick Monteith, Worldwide Trade Association of Post Production, California Space and Technology Alliance California Retailers Association*

Law Prior to Amendment:

Non-annual Plants

Under existing law, the sale and purchase of seeds and annual plants that produce food for human consumption or that are to be resold in the regular course of business are exempt from sales and use tax. Therefore, under existing law, the sale of plants such as lettuce, radishes and parsley are exempt from tax, as are plants that are plowed under at the end of the growing season, such as strawberry plants; the sale of perennial plants, such as nut trees, fruit trees, asparagus, and rhubarb, are not sales of "annual" plants and are currently subject to tax.

Comments:

1. **Purpose.** This provision is sponsored by Senator Monteith in response to an issue raised by a constituent who was concerned with the sales tax imposed on a purchase of grapevine rootstock. Senator Monteith believes that there is no logical reason to apply tax to sales of perennial plants, but exempt sales of annual plants when both plants produce products for human consumption.

2. **This bill will eliminate the need to make distinctions between "annual" plants and "non-annual" plants.** The Board has been administering the current exemption for sales of annual plants since April of 1938 - over 60 years. On occasion, issues have arisen concerning whether or not a specific plant is regarded as "annual." This provision will eliminate these issues. It will also ease some of the burden placed on retailers of these products, since they will no longer be required to make these distinctions, and would simplify audits of these retailers as well.

Teleproduction and post production equipment

Law Prior to Amendment:

Existing law, Section 6377 of the Sales and Use Tax Law, provides an exemption from the 5 percent state sales and use tax, for the sale and purchase of any tangible personal property purchased for use in a new manufacturing business, as defined.

With regard to the motion picture industry, the Sales and Use Tax Law provides the following:

- Section 6010.4 provides that when certain persons form partnerships to reduce the cost of producing motion pictures through sharing of equipment and other assets, the furnishing of that property, without transfer of title, by the partnership to its members for the purpose of producing motion pictures does not constitute a "sale" and, therefore, no tax applies to the furnishing of that property.

- Section 6010.6 provides that "sale" and "purchase" do not include the following: 1) any transfer of any qualified motion picture or any interest or rights therein when the transfer is prior to the date that the qualified motion picture is exhibited or broadcast to its general audience, and 2) the performance of qualified motion picture production services, as defined, in connection with the production of any qualified motion picture, as defined. Therefore, no tax applies to these transactions.

- Leases of motion pictures, animated motion pictures, and television films and tapes (except video cassettes, tapes, and discs leased for private use under which the lessee does not obtain the right to license or broadcast) do not constitute "sales." Therefore, the lessor is the consumer of the property he or she leases and is required to pay tax on his or her cost of the property.

Background:

Similar provisions were contained in AB 1062 (Battin), introduced in the 1997 Legislative Session. That measure died in the Assembly Appropriations Committee. Other bills that have been introduced to expand the manufacturing exemption to other segments of industry include:

AB 2661 (1996, Alpert) which would have extended the manufacturing exemption to sales and purchases of computers and related equipment for use in development of software, was held in the Senate Appropriations Committee.

AB 2761 (1995, Poochigian) which would have extended the manufacturing exemption to sales and purchases of certain agricultural activities, failed passage in the Senate Revenue and Taxation Committee.

AB 3089 (1994, Cannella) which would have also extended the manufacturing exemption to sales and purchases of certain agricultural activities, failed passage in the Assembly Revenue and Taxation Committee.

AB 208 (1995, Cannella), as introduced, which additionally would have extended the manufacturing exemption to sales and purchases certain agricultural activities, passed out of the Assembly Revenue and Taxation Committee with the sales and use tax provisions amended out.

SB 38 (1997, Johannessen) which would have expanded the manufacturing exemption for sales and purchases of "implements of husbandry" for use by a qualified person in the conduct of his or her agricultural operations, failed passage in the Senate Revenue and Taxation Committee, and AB 138 (1997, Poochigian, et al.) which would have expanded the exemption for equipment used in agricultural post-harvesting activities, died in the Assembly Appropriations Committee. Also, AB 1063 (1997, Lempert) which would have extended the manufacturing exemption to sales and purchases of equipment used by establishments in the business of developing and manufacturing custom or prepackaged software, died in the Senate Revenue and Taxation Committee.

Comments:

1. **Purpose.** The purpose of this provision is to provide a tax incentive for postproduction work to ensure that the entertainment industry continues to thrive in California. The equipment used in postproduction work is becoming increasingly high-tech that requires the use of specialized equipment.

2. **Proposed partial exemption will be more complicated to administer than most other tax exemptions.** Like the current 5 percent exemption provided to qualifying manufacturers, this 5 percent exemption for postproduction services will be considerably more complicated to administer than most other exemptions. Generally, sales and use tax exemptions are targeted to a specific type of property, or purchaser, rather than a use to which that property would be put. This exemption, like the current exemption, has several criteria which must be considered before a purchase of property may be exempted from tax. The exemption hinges on, among other things, the use of the property, the nature of the business, whether the item is "consumable," and more.

   In addition, this exemption, like the current exemption, exempts only the state tax portion of the sales and use tax rate. Under the current structure of the Sales and Use Tax Law, the current manufacturer's exemption is the only exemption where the local and district taxes remain applicable. Consequently, retailers making sales to qualifying purchasers are burdened with additional record keeping and segregations for purposes of reporting the correct amount of tax. Yet, retailers receive no significant benefit from these exemptions.

Space Flight Property

Law Prior to Amendment:

Under existing law, Revenue and Taxation Code Section 6380 provides a sales and use tax exemption until January 1, 2004 for qualified property used in space flight. "Space flight" is defined under Section 6380 to mean any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, satellite, space facility, or space station of any kind and originating at Vandenberg Air Force Base.

Background:

Section 6380 was added to the Sales and Use Tax Law in the 1993 Legislative Session by SB 671 (Alquist, et al., Ch. 881). At that time, the bill was addressing Motorola Company's, through its IRIDIUM™ project, development of a global wireless communications network that will combine the worldwide reach of 66 low-earth-orbit satellites with land-based wireless systems to enable subscribers to communicate using handheld telephones and pagers virtually anywhere in the world. Vandenberg Air Force Base in Santa Barbara County was the only base equipped in the United States for launching these types of satellites, because of the required orbit. Since this exemption was created, deployment of its 72-satellite constellation, including in-orbit spares, has been completed (40 of those through a total of 8 launches were launched from Vandenberg). Motorola is expecting the IRIDIUM™ project to be completed and introduced to the world on September, 23 1998.

Comments:

1. **Purpose.** This provision is intended to demonstrate California's intent to ensure that the commercial space industry in California grows and is not lost to competitive states or countries. The author's office points out that remarkable progress has been made in this industry and that currently, there are at least two additional sites where commercial space launches will be taking place in the near future. These sites include the X-33 Program currently being developed, as well as a future launch site for the next generation of space shuttles, the VentureStar™, and the Sea Launch Program being developed by the Boeing Company that would allow commercial space launches out of Long Beach.

2. **What are the X-33 and Sea Launch programs?** According to information released by NASA, the X-33 is a subscale technology demonstration prototype of a commercial reusable launch vehicle (RLV). Lockheed Martin has labeled it the "VentureStar™," and hopes to complete its development early in the next century. Through development and demonstration flights, the X-33 will provide the information needed for industry to decide by the year 2000 whether to proceed with the development of a full-scale, commercial RLV program.

   Construction of the launch site for the X-33 has begun at Edwards Air Force Base in Antelope Valley. According to NASA, a full-scale, single-stage-to-orbit RLV could dramatically increase reliability and lower the cost of putting a pound of payload into space from $10,000 to $1,000. By reducing the cost associated with transporting payloads into Low Earth Orbit, a commercial RLV would create new opportunities for space access and significantly improve U.S. economic competitiveness in the worldwide launch marketplace.

   According to Boeing, the Sea Launch program is a multi-national sea-based commercial satellite launching venture comprised of two vessels where rocket launching equipment is being installed. The joint venture partners include companies from Norway, Moscow, Ukraine and the Boeing Commercial Space Co. of Seattle. Hughes Space & Communications has contracted with Sea Launch for 13 satellite launches. The first mission will be in the fall of 1998 using the first of Hughes' latest model communications satellites. That satellite will be part of the PanAm satellite network. Construction of the 34,000 ton Sea Launch Commander began in 1996 in Norway. It will serve as a floating rocket assembly factory while in port (Long Beach, California) and as a mission command center during launch operations at sea.

3. **Only property having space flight capability qualifies for the exemption.** Section 6380 expressly excludes from the provisions of the exemption any material that is not intended to be launched into space. Therefore, the sale or use in California of any item which is not intended to be launched would continue to remain subject to tax.

4. **From a tax administrative viewpoint, this exemption could be complicated. For each exemption incorporated into the Sales and Use Tax Law, the complexity of the law increases.** Some exemptions, of course, are less complex than others (the exemption for candy is generally less complicated than the exemption for custom-made biomechanical foot orthoses). Due to the highly technical nature of the products being exempted (how would a Board auditor confirm whether an "X-33" has space flight capability or not?), administration of the exemption could become more complicated.

Senate Bill 591 (Johnson, et al.) Chapter 922
Firearms fees imposed pursuant to Penal Code

Effective January 1, 1999. Amends Section 12076 of the Penal Code.

This bill amends the Penal Code to authorize the Department of Justice to require a firearms dealer to charge each firearm purchaser a fee not to exceed $14, except as specified.

Sponsor: California Rifle and Pistol Association

Law Prior to Amendment:

Under existing law, Section 12076 of the Penal Code authorizes the Department of Justice to charge a firearms dealer a fee not to exceed $14, or more if there is an increase in the California Consumer Price Index, for the sale of a firearm.

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted by law. "Gross receipts" and "sales price" are terms defined in the law which include the total amount of the sale or lease or rental price, as the case may be without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses. However, the following fees and taxes have specifically been excluded from the definition of "gross receipts" and "sales price" thereby excluding charges for these amounts from the computation of sales tax:

- Federal taxes (except most manufacturers' or importers' excise taxes)
- Local sales and use taxes when they are a stated percentage of the sales price
- Certain state taxes or fees imposed on vehicles, mobilehomes or commercial coaches that have been added to, or are measured by a stated percentage of the sales price
- State-imposed diesel fuel tax

Under existing law, when a firearms dealer passes the Department of Justice-imposed fee onto the purchaser, it is includable in the dealer's gross receipts and is subject to tax.

Comments:

1. **Purpose.** The purpose of this measure is to exclude the fees imposed by the Department of Justice on firearm dealers from the computation of tax when the firearm dealer passes this fee onto his or her customer, as it is objectionable to apply a sales tax on a state-imposed fee.

2. **What is this fee imposed upon firearm dealers?** Section 12076 of the Penal Code governs the scope of the investigation to be made by the Department of Justice when determining whether an individual is disqualified from obtaining possession of a firearm. This section authorizes the Department of Justice to impose a fee on persons licensed to sell firearms to offset the Department's costs in carrying out these duties. The fee the Department may charge is limited to a maximum of $14, except it may be increased at a rate not to exceed an increase in the California Consumer Price Index. The fee currently imposed by the Department amounts to $14; however, a reduced fee of $10 is imposed on each additional firearm purchased concomitantly with the first.

3. **The amendment to the Penal Code effectively excludes the firearm fee from the computation of tax.** Under the current Penal Code Section 12076, the $14 fee is imposed upon the dealer. Currently, there is no statutory requirement that the dealers pass on the fee to the gun purchasers; however, when a dealer chooses to pass on the fee to the purchaser, it becomes part of his or her taxable selling price. However, the amendments contained in the bill to the Penal Code state that "[T]he Department of Justice may require the dealer to charge each firearm purchaser a fee..." (italics added). Since the fee would no longer be imposed directly upon the dealer, the fee would no longer be viewed as a dealer expense. Therefore, the fee is now excludable from the measure of tax.

Senate Bill 781 (Maddy) Chapter 234
Transactions and use tax - City of Placerville

Urgency statute; effective August 3, 1998. Adds Chapter 2.97 (commencing with Section 7286.70) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

This bill authorizes the city of Placerville, subject to voter approval, to levy a transactions and use tax at a rate of 1/8 or 1/4 percent.

Sponsor: City of Placerville

Law Prior to Amendment:

The Bradley Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 and 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley Burns Law and levy the 1 and 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, the 1/4 percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1 and 1/4 percent.

Under the existing Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 and 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 and 3/4 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of 1/4 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits a county to form a special purpose authority which may levy a transactions and use tax at the rate of either 1/4 or 1/2 percent, with majority voter approval. Section

7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of 1/4 or 1/2 percent for purposes of funding drug abuse prevention, crime prevention, health care services, and public upon majority voter approval. (Based on recent case law invalidating the majority vote requirement, Board legal staff have taken the position that a special purpose authority may only impose a transactions and use tax if the authority meets the requirements of the section, and obtains approval of two-thirds votes, rather than a majority vote of the qualified electors of the authority.) Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of 1/8 or 1/4 percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its "sphere of influence"), Lakeport, Madera, Truckee, and Woodland. The cities of Clearlake and Calexico are the only two cities currently imposing a tax, and Truckee will impose a tax effective 10/01/98. The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/20/96, however, this tax ceased to be operative, as it was declared unconstitutional in Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The City of Placerville is located in El Dorado County, which imposes no transactions and use tax. Placerville, under the Bradley-Burns Law, imposes a sales and use tax rate of 1.0 percent, which is credited against El Dorado County's 1 percent rate. Therefore, the current state and local tax rate in El Dorado County is 7 and 1/4 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose an additional tax that is administered by the Board. These taxes are commonly referred to as transactions and use taxes. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the County of

Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent. San Francisco City and County has the highest transactions and use tax rate of 1 and 1/4 percent. The remaining districts impose rates in between these ranges.

There have been several bills in prior years that would authorize cities to impose transactions and use taxes. The Board is generally opposed to extending this authorization to cities, arguing that multiple rates covering multiple jurisdictions within a single county make record-keeping for retailers more complex which results in a larger margin of error. Most recently, the Board voted to oppose SB 355 (Monteith) from the current Session which allows the city of Madera to levy a 0.25 percent sales tax for public safety services. The Board was also opposed to AB 1472 (Thomson), which allows the City of Woodland to impose a transactions and use tax rate of 0.25 or 0.50 percent, upon voter approval, for general revenue purposes. The Board also voted to oppose SB 1424 (Maddy), which would allow the City of Clovis to levy a 0.3 percent sales tax for police and fire facilities. However, the Governor signed SB 355 (Chapter 409, Statutes of 1997), AB 1472 (Chapter 712 Statutes of 1997), and SB 1424 (Chapter 158 Statutes of 1998).

Comments:

1. **Purpose.** The purpose of this bill is to enable the City of Placerville to raise additional revenues for police services.

2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. The retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

3. **The Transactions and Use Tax Law is becoming as complicated as the local tax** laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax.

That city was Calexico. Currently, nine cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There over 450 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes severely complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered. This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.

Senate Bill 1383 (Leslie) Chapter 623
Sales and use tax administration

Effective January 1, 1999. Among other things, adds Sections 7056.5 and 19542.1 to the Revenue and Taxation Code.

This bill, among other provisions, provides that any willful unauthorized inspection (browsing) or unwarranted disclosure or use of certain tax information by officers or employees of the Board of Equalization and the Franchise Tax Board is a misdemeanor.

Sponsor: Senator Leslie

Law Prior to Amendment:

The Board of Equalization (BOE) administers numerous tax and fee laws containing specific confidentiality provisions that prohibit unauthorized disclosure or use of confidential taxpayer information. In addition, while not specifically provided by statute, it has been Board policy to consider willful unauthorized inspection a prohibited employee act. Under California Franchise and Income Tax Law, administered by the Franchise Tax Board, it is a misdemeanor for any state officer or employee to make an unwarranted disclosure or use of tax information obtained under the Franchise and Income Tax Law. "Willful unauthorized inspection" of information is not currently addressed in state law. However, state employees are now subject to federal misdemeanor or felony charges for unauthorized inspection, as well as unauthorized disclosure or use, of federal tax returns or return information obtained through the Internal Revenue Service (IRS).

Background:

In a recent court decision, an individual was convicted of violating the Federal wire fraud statute and a Federal computer fraud statute for unauthorized inspection. However, the U.S. First Circuit Court of Appeals overturned this conviction (U.S. v. Czubinski, DTR 2/5/97, p. K-2.330). The Court stated that unauthorized browsing of taxpayer files, although inappropriate, cannot sustain a federal felony conviction. Unauthorized inspection of information of any department or agency of the United States (including the IRS) via computer was made a crime by the Economic Espionage Act of 1996. However, that provision did not apply to inspection of paper documents.

As a result of the Czubinski decision, the U.S. Congress sought legislation to make it easier for the IRS to appropriately discipline employees who violate the policy against unauthorized access. Effective August 5, 1997, the Taxpayer Browsing Protection Act (H.R. 1226) applies criminal sanctions for the unauthorized inspection of federal tax return information. This law applies to federal and state employees alike, though it covers only federal data, and imposes a federal misdemeanor penalty of up to $1,000 and/or imprisonment up to one year for the willful, unauthorized inspection of tax returns or return information. Prior to the Taxpayer Browsing Protection Act, criminal penalties applied only when return information was disclosed to an unauthorized third party, regardless of whether the access to the information was authorized or otherwise. Civil damages of $1,000 or actual damages, whichever is greater may also apply. The expanded cause of action for civil damages applies to employees or contractors who knowingly or by reason of negligence inspect a return or return information.

Currently, the BOE, the Franchise Tax Board (FTB), and the Employment Development Department (EDD) receive and/or maintain IRS information. Each employee with access to this information is required to sign a Confidentiality Statement and receive an Information Security Requirements for Employees with Access to Confidential Information Pamphlet (Pamphlet). Through the Strategic Tax Partnership, the BOE in conjunction with the EDD and the FTB developed the Confidentiality Statement and Pamphlet which were designed to inform all BOE employees of the importance of protecting confidential information. Violations of state law are generally misdemeanors punishable by a fine not exceeding $1,000, by imprisonment not exceeding one year, or by both that fine and imprisonment, in the discretion of the court.

Comments:

1. **Purpose.** According to the author's office, this bill is being introduced to protect taxpayers from certain acts by employees of agencies that have access to their confidential information. This bill would align state law with the latest changes to federal law under the Taxpayer Browsing Protection Act.

2. **Current Board policy already prohibits such acts**. The Board's tax and fee programs, including the Sales and Use Tax Law, already contain provisions that prohibit employees from certain acts in order to protect taxpayer confidentiality.

Senate Bill 1424 (Maddy) Chapter 158
Transactions and use tax - City of Clovis

Effective January 1, 1999. Adds Chapter 2.91 (commencing with Section 7286.48) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

This bill authorizes the city of Clovis, subject to voter approval, to levy a transactions and use tax at a rate not to exceed 0.3 percent.

Sponsor: City of Clovis

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 and 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 and 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, the 1/4 percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1 and 1/4 percent.

Under the existing Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 and 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 and 3/4 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of 1/4 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits a county to form a special purpose authority which may levy a transactions and use tax at the rate of either 1/4 or 1/2 percent, with majority voter approval. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of 1/4 or 1/2 percent, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon majority voter approval. (Based on recent case law invalidating the majority vote requirement, Board legal staff have taken the position that a special purpose authority may only impose a transactions and use tax if the authority meets the requirements of the section, and obtains approval of two-thirds votes, rather than a majority vote of the qualified electors of the authority.) Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of 1/8 or 1/4 percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Fort Bragg, Fresno (and its "sphere of influence"), Lakeport, Madera, Truckee, and Woodland. The cities of Clearlake and Calexico are the only two cities currently imposing a tax, and Truckee will impose a tax effective 10/01/98.

The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/20/96, however, this tax ceased to be operative, as it was declared unconstitutional in Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a. The City of Clovis is located in Fresno County. The County of Fresno has imposed a 1/2 percent transactions and use tax for transportation purposes since July 1, 1987. The City of Clovis, under the Bradley-Burns Law, imposes a sales tax rate of 0.955 percent, which is credited against Fresno County's 1 percent rate. Therefore, the current state and local tax rate within Fresno County is 7 and 3/4 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose an additional tax that is administered by the Board. These taxes are commonly referred to as transactions and use taxes. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent.

San Francisco City and County has the highest transactions and use tax rate of 1 and 1/4 percent. The remaining districts impose rates in between these ranges. The various combined state and local tax rates and taxing jurisdictions levying those rates (as of July 1, 1998) is shown on the attached schedule.

There have been several bills in prior years that would authorize cities to impose transactions and use taxes. The Board is generally opposed to extending this authorization to cities, arguing that multiple rates covering multiple jurisdictions within a single county make record-keeping for retailers more complex which results in a larger margin of error. Most recently, the Board voted to oppose SB 355 (Monteith) from the current Session which allows the city of Madera to levy a 1/4 percent sales tax for public safety services. The Board was also opposed to AB 1472 (Thomson), which allows the City of Woodland to impose a transactions and use tax rate of 1/4 or 1/2 percent, upon voter approval, for general revenue purposes. However, the Governor signed both SB 355 (Chapter 409) and AB 1472 (Chapter 712). The Board also voted to oppose SB 781 (Maddy), which would allow the City of Placerville to levy a 1/8 or 1/4 percent sales tax for police services.

Comments:

1. **Purpose.** The purpose of the bill is to enable the City of Clovis to raise additional revenues for general purposes. The sponsor of this measure is the City of Clovis.

2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. The retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

3. **The Transactions and Use Tax Law is becoming as complicated as the local tax** laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation

was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, nine cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There are over 450 cities within California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley Burns uniform local sales and use tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.

Senate Bill 1488 (Rainey) Chapter 1044
Transactions and use tax - North Lake Tahoe Transportation Authority

Effective January 1, 1999. Adds Title 7.96 (commencing with Section 67960) to the Government Code.

This bill, among other things, authorizes the creation of the North Lake Tahoe Transportation Authority and allows the authority, subject to voter approval, to levy a transactions and use tax at a rate of 1/4 or 1/2 percent.

Sponsor: North Lake Tahoe Resort Association

Law Prior to Amendment:

The Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The rate of tax is fixed at 1 and 1/4 percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1 and 1/4 percent local tax.

Under this Bradley-Burns Uniform Local Sales and Use Tax Law, the 1/4 percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1 and 1/4 percent.

Under the existing Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of 1/4 percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under this law, the maximum allowable rate of transactions and use taxes levied by any district may not exceed 1 and 1/2 percent, with the exception of San Francisco and San Mateo, whose combined rates may not exceed 1 and 3/4 and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of 1/4 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits a county to form a special purpose authority which may levy a transactions and use tax at the rate of either 1/4 or 1/2 percent, with majority voter approval. Section

7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of 1/4 or 1/2 percent for purposes of funding drug abuse prevention, crime prevention, health care services, and public education purposes upon majority voter approval. (Based on recent case law invalidating the majority vote requirement, Board legal staff have taken the position that a special purpose authority may only impose a transactions and use tax if the authority meets the requirements of the section, and obtains approval of two-thirds votes, rather than a majority vote, of the qualified voters of the county.) Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of 1/8 or 1/4 percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its "sphere of influence"), Lakeport, Madera, Truckee, and Woodland. The cities of Clearlake and Calexico are the only two cities currently imposing a tax, and Truckee will impose a tax effective 10/01/98. The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/20/96, however, this tax ceased to be operative, as it was declared unconstitutional in Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The North Lake Tahoe Transportation Authority's specified territory is located in Placer County, which imposes no transactions and use tax. Therefore, the current state and local tax rate in Placer County is 7 and 1/4 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

In General:

Many special districts in California impose an additional tax that is administered by the Board. These taxes are commonly referred to as transactions and use taxes. In Sacramento County, for example, a transactions and use tax of 1/2 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the County of Stanislaus imposes the lowest transactions and use tax rate of 1/8 of one percent.

San Francisco City and County has the highest transactions and use tax rate of 1 and 1/4 percent. The remaining districts impose rates in between these ranges.

Senate Bill 1598 (Chapter 1067, Statutes of 1992) authorized the Fresno Metropolitan Projects Authority to impose a transactions and use tax at a maximum rate of 1/10 of 1 percent. That legislation resulted in the imposition of the tax in the area "within the adopted spheres of influence of the City of Fresno," as identified. The tax was imposed from July 1, 1993 through March 21, 1996, at which time it was declared unconstitutional in the court's finding that the authority was a private entity and thus barred by the state's Constitution from levying any tax. The Board opposed SB 1598, noting that administration problems are compounded if a portion of a county assesses tax at a different rate than the remainder of the county.

In the 1993-1994 Legislative Session, Assembly Member Isenberg introduced a bill that was similar to this bill. Assembly Bill 3598 would have authorized the Sacramento Metropolitan Projects Authority to levy a transactions and use tax at a rate of 0.1 percent if approved by a majority of the voters within a specified boundary of Sacramento County. The Board was opposed to AB 3598, and the Governor vetoed the bill, noting concern with the proposed boundaries for the new district. In his veto statement, the Governor referenced SB 1598 and wrote:

> "Unlike the prior bill, which used the sphere of influence of the City, this bill haphazardly cuts across jurisdictions in Sacramento County. This raises the specter of gerrymandering for the purposes of manipulating the election result."

There have been several bills in prior years that would authorize cities to impose transactions and use taxes. The Board is generally opposed to extending this authorization to locations covering anything other than county boundaries, arguing that multiple rates covering multiple jurisdictions within a single county make record-keeping for retailers more complex which results in a larger margin of error. Most recently, the Board voted to oppose SB 355 (Monteith) from the current Session which allows the city of Madera to levy a 0.25 percent sales tax for public safety services; AB 1472 (Thomson), which allows the City of Woodland to impose a transactions and use tax rate of 0.25 or 0.50 percent, upon voter approval, for general revenue purposes; SB 781 (Maddy), which allows the City of Placerville to impose a transactions and use tax rate of 0.125 or 0.25 percent, upon voter approval, for police services; and SB 1424 (Maddy), which would allow the City of Clovis to levy a 0.3 percent sales tax for police and fire facilities. However, the Governor signed SB 355 (Chapter 409, Statutes of 1997), AB 1472 (Chapter 712 Statutes of 1997), SB 781 (Chapter 234, Statutes of 1998), and SB 1424 (Chapter 158 Statutes of 1998).

Comments:

1. **Purpose.** The purpose of this bill is to enable the North Lake Tahoe region to raise revenue for transportation purposes.

2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. The retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, the retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

3. **The Transactions and Use Tax Law is becoming as complicated as the local tax** laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, nine cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Uniform Local Tax Law.** There over 450 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes severely complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Uniform Local Sales and Use Tax Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered. This would minimize the problems associated with districts that are not coterminous with county

boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.

5. **This bill would be very difficult to administer.** Currently, with exception of the cities of Calexico and Clearlake (in Imperial and Lake County, respectively), and beginning in 10/1/98 the Town of Truckee (in Nevada County), all districts imposing a transactions and use tax have boundaries equal to their respective county lines. In processing returns and payments, the board assigns a specific code in order to properly identify accounts within a transactions and use tax district. If enacted, this bill would require the Board to manually identify accounts and addresses falling within the boundaries of the Authority, resulting in increased costs and margin of error.

6. **In addition, there would be a tremendous additional impact on the businesses that have to report the tax.** Currently, businesses located in or shipping property to Placer county account for the transactions and use tax on a countywide basis. If a transactions and use tax is imposed within the boundaries of the Authority, businesses will have to account for sales made in only a portion of the county (the boundaries of the Authority). This will increase the burden on them as well as decrease the accuracy of their reports. It would make it much easier for taxpayers, especially those located out-of-state, and somewhat easier for the Board, if the new district boundaries were related to identifiable jurisdictions or, say, to specific 5-digit postal zip code regions.

7. **Some technical amendments need to be addressed.** Transactions and use tax authority should be provided in the Revenue and Taxation Code, not the Government Code. The author's office has indicated that if this bill is passed, special legislation would be created to address this concern.

Senate Bill 2174 (Rainey) Chapter 1049
Public Records Act

Effective January 1, 1999. Adds Section 6257.5 to, and Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of, the Government Code.

This bill specifies that, for all agencies subject to the California Public Records Act (Government Code Section 6250 et seq.), no limitations on access to a public record may be made based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure. This bill would also require the Board of Equalization to adopt regulations to establish procedures and guidelines to access public records, and to study and report to the Legislature by January 1, 2000, concerning the feasibility and cost of indexing its public records.

Sponsor: Associated Sales Tax Consultants

Law Prior to Amendment:

Under existing law, the Public Records Act (commencing with Section 6250 of the Government Code) provides for public access to any record maintained by a state and local agency, including the Board of Equalization (Board), unless there is a statutory exemption that allows or requires the agency to withhold the record.
In State Board of Equalization v. Superior Court, 10 Cal.App.4th 1177, the court decided that the Board could not withhold disclosure of its "working law" merely because such documents contained confidential taxpayer information, since the confidential information could be excised without destroying the utility of the documents. Specifically, the court directed the Board to disclose to Associated Sales Tax Consultants (ASTC) certain records, with confidential information excised, which showed the Board's practice in interpreting and applying two Sales and Use Tax regulations.

The Public Records Act requires that within 10 days after receipt of a request for copies of records, the agency must determine whether it will comply with or deny the request and must immediately notify the person making the request of such determination and the reasons for the determination (Government Code Section 6256). Government Code section 6257 provides that the agency "upon request for a copy of records ... shall make the records promptly available." Current case law provides for a flexible time limit for providing copies of records to the public, based

on a reasonableness standard (Rogers v. Superior Court 19 Cal. App. 4th 469, 483 (1993).). Reasonableness is determined by the circumstances of the request.
The Board is in full compliance with the Public Records Act and State Board of Equalization v. Superior Court. The Board provides copies of public records, with confidential taxpayer information redacted, upon request. Consistent with the size and nature of the request, the Board provides copies of public records within a reasonable amount of time.

Comments:

1. **Purpose.** This bill is intended to provide easier access to public records.

2. **This bill would establish additional public records requirements applicable only to the Board.** The Board would be required to adopt regulations that specifically identifies and describes the various types of Board public records that pertain to its tax and fee programs.

3. **This bill would require the Board to study and report to the Legislature the feasibility and cost to create and maintain a subject matter index of all public records pertaining to Board-administered tax and fee programs.** The Board has been exploring the feasibility of establishing a Board-wide centralized index and filing system for all documents used by the staff for tax administration; however, this project has not yet been completed.

<u>Senate Bill 2230 (Committee on Revenue and Taxation) Chapter 420</u>

Board-sponsored housekeeping measure

Effective January 1, 1999. Amends Sections 6479.3, 8131, 9156, 30009, 30016, 30367, 32406, 40117, 41106, 43456, 45656, 46507, 55226, and 60525 of the Revenue and Taxation Code.

Among the provisions of this Board-sponsored housekeeping and technical measure, this bill clarifies the penalties for taxpayers required to report their sales and use tax liability by means of an electronic funds transfer.

Law Prior to Amendment:

Under current law, Section 6479.3 of the Revenue and Taxation Code requires any person whose estimated sales and use tax liability averages $20,000 or more per month to remit amounts due by an electronic funds transfer (EFT). Under the law, if a person fails to timely remit those taxes, or fails to remit those taxes by other than an electronic funds transfer, or fails to file a timely return, that person becomes liable for a 10 percent penalty on the amount of those taxes.

Existing law, Section 6591, also contains a provision that imposes a 10 percent penalty for any late payment of taxes.

Comments:

Under a Board-sponsored measure enacted in the 1996 Legislative Session (Senate Bill 1827, Chapter 1087), Sections 6479.3 and 6591 were amended to specify that the maximum penalty that can be applied under the provisions of each statute to any one reporting period is 10 percent. The purpose of that measure was to eliminate the inequities that existed between the laws applicable to those taxpayers not required to remit by EFT and those that were. At that time, EFT taxpayers could have been assessed three-10 percent penalties: one for paying late, one for filing the return late, and one for remitting taxes by other than an appropriate EFT. Those taxpayers not required to remit by EFT could have been assessed only one-10 percent penalty -- for paying late. Therefore, to eliminate this inequity, SB 1827 amended both Sections 6479.3 and 6591 to specify that the maximum penalty that could be imposed for any one reporting period under each statute would be limited to 10 percent. Therefore, even if a taxpayer failed to file a timely return, failed to remit by an EFT, and failed to pay timely, that taxpayer would only be liable for one-10 percent penalty for that reporting period.

Staff has been administering the law consistent with the intent of SB 1827. However, after further review, staff has discovered that EFT taxpayers could still be held liable for two-10 percent penalties for a reporting period. This is because of the statute that imposes a 10-percent penalty for general late payments of taxes (Section 6591) and the wording of subdivision (f) of Section 6479.3. This subdivision states that a person who is required to remit by EFT, who fails to timely remit those taxes *and who is issued a deficiency determination pursuant to Section 6481 with respect to those taxes*, shall be liable for a 10 percent penalty. Since a "deficiency determination pursuant to Section 6481" is generally not issued on these types of late payments, this penalty provision is generally not applicable. Therefore, in cases where an EFT taxpayer pays late, the late payment penalty that is imposed falls under the authority of Section 6591. Consequently, when an EFT taxpayer pays late, and either fails to pay by an appropriate electronics funds transfer, or fails to timely file the return, that taxpayer can still be held liable for two-ten percent penalties: one under Section 6591, and one under Section 6479.3.

This proposal would eliminate this problem by revising Section 6479.3 to eliminate the inappropriate reference to "deficiency determination pursuant to Section 6481" and to make the statute complete within itself so that all applicable penalty and interest provisions attributable to EFT taxpayers would lie within that statute.

TABLE OF SECTIONS AFFECTED

SECTIONS	BILL NUMBER	SUBJECT
Revenue & Taxation Code		
§6203 – Amend	AB 1614; Ch. 351	California Internet Tax Freedom Act
§6358 – Amend	AB 2798; Ch. 323	Non-annual plants
§6378 – Add	AB 2798; Ch. 323	Teleproduction and post production
§6380 – Amend	AB 2798; Ch. 323	Space flight property
§6479.3. – Amend	SB 2230, Ch. 420	Electronic Fund Transfers
§6593.5 - Add	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§6832 - Add	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§6964 - Add	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§7051.3 – Amend	AB 1243; Ch. 15	Allocation of local tax pooled amounts
§7056.5 - Add	SB 1383; Ch. 623	Sales and use tax administration
§7084 - Amend	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§7091 - Amend	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§7094.1 - Amend	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§7097 - Add	AB 821; Ch. 612	Taxpayers' Bill of Rights II
§7204.3 – Add	AB 66; Ch. 1027	Local sales tax allocation – jet fuel
§7205 – Amend	AB 66; Ch. 1027	Local sales tax allocation – jet fuel
§7205.1 – Amend	AB 1946; Ch. 140	Local use tax – leased vehicles

TABLE OF SECTIONS AFFECTED (CONTINUED)

§7273 – Amend	**AB 856; Ch. 890**	**Administrative cost recovery**
Chapter 2.91 (commencing with §7286.48) – Add	**SB 1424; Ch. 158**	**Transactions and use tax – Clovis**
Chapter 2.97 (commencing with §7286.7) - Add	**SB 781; Ch. 234**	**Transactions and use tax – Placerville**
§19542.1 – Add	**SB 1383; Ch. 623**	**Sales and use tax administration**
Part 32 (commencing with §65001) – Add	**AB 1614; Ch. 351**	**California Internet Tax Freedom Act**
Government Code		
§6257.5 – Add	**SB 2174; Ch. 1049**	**Public Records Act**
§11002 – Amend	**AB 821; Ch. 612**	**Taxpayers' Bill of Rights II**
§11003 – Amend	**AB 821; Ch. 612**	**Taxpayers' Bill of Rights II**
Chapter 3 (commencing with §15650) – Add	**SB 2174; Ch. 1049**	**Public Records Act**
Title 7.96 (commencing with §67960) - Add	**SB 1488; Ch. 1044**	**Transactions and use tax - Tahoe**
Penal Code		
§12076 - Amend	**SB 591; Ch. 922**	**Firearm fees**