

## **700.0000 APPLICATION OF TAX—Regulation 1803**

**700.0001 Application of City Sales Tax.** The sales tax is an excise tax levied for the privilege of conducting a retail business and is measured as a percentage of the gross receipts from sales. For sales tax to apply to sales of goods that are shipped from an out-of-state retailer to a California purchaser, two criteria must be met: (1) there must be participation in the sales by a previously-established sales office of the retailer in this state; and (2) the sale must take place in California.

Similar to criterion (2) above, a city can tax a selling activity only when that activity occurs within its borders. The fact that title may pass in a particular city does not give that city the power to tax the sale unless the retailer also exercises its privilege of selling within the city, i.e., the retailer maintains a place of sale there. A location cannot be considered a place of sale of the retailer under Regulation 1802 unless it can be issued a seller's permit. (Revenue and Taxation Code section 6066 et seq.) Regulation 1699(a) requires that for a location to be issued a permit, the place must be owned or controlled by the retailer at which clients customarily negotiate sales. A place where title passes thus does not qualify as a place of sale unless the sale is negotiated there.

The State sales tax laws are incorporated into the Local Tax Law. (Revenue and Taxation Code sections 7202(b) and 7203(a).) The local tax ordinances are subject to the same constraints to which the state is subject, plus they are subject to whatever limitations are provided in the state sales tax itself. A *sales* tax enacted by a city and/or county under the Bradley Burns Uniform Sales and Use Tax Law (local tax) may not be applied to a transaction that is subject to state *use* tax. If the sales at issue are subject to state sales tax, they are subject to local sales tax. If the sales are subject to state use tax, then local use tax applies. 6/14/02. (2003–2).

**700.0010 Allocation of Local Use Tax.** When goods are located out of state at the time of the sale and shipped to the customer in-state, the use tax applies. Where use tax applies, the place of sale rules for allocation of local tax do not apply. The tax consequences are determined by the place of first functional use. Local tax should be allocated to the county of first functional use. 2/3/94.

**700.0020 Armed Forces Personnel.** If a member of the Armed Forces stationed in a conforming county purchases a motor vehicle in a nonconforming county for use in the conforming county, the local use tax will be considered applicable. The state use tax and the state-administered local use tax are not applicable if the vehicle is purchased outside this state by a member of the Armed Forces unless his intention to use the vehicle in this state results from his own determination apart from his status as a member of the Armed Forces, as, for example, where he buys the vehicle in anticipation of discharge and brings the vehicle to California in pursuance of his intention to do so solely as a matter of his own volition. 5/17/57.

(With respect to purchases made on and after October 1, 1969, the serviceman will be considered to have made his own independent determination to use the vehicle in

California if he contracts to purchase the vehicle after he has received official orders transferring him to California.)

[700.0040](#) **Banks.** The constitutional exemption of banks from all taxes other than the in lieu income tax, exempts banks from the state use tax and likewise from a local use tax. 10/3/56.

[700.0060](#) **Banks and Insurance Companies.** The constitutional prohibition of the imposition of a tax directly upon banks or insurance companies would prevent the imposition of a local use tax to the same extent that it prevents the application of the state use tax. Similarly, in transactions involving retail sales to banks or insurance companies the seller is liable for payment of local sales taxes imposed by ordinances adopted under the Bradley-Burns Law to the same extent as in the case of sales to other purchasers. 7/21/58; 7/25/58.

[700.0066](#) **Disclosure of Taxpayer Information by City.** A city audited a taxpayer with respect to a local tax. The sales reported by the taxpayer with respect to the local tax differed from the sales reported to the Board. This city is not barred by confidentiality requirements from disclosing to the taxpayer that there is discrepancy between the two returns filed by that taxpayer. Obviously the city could not disclose the information received from the Board to a different taxpayer. 10/10/86.

[700.0070](#) **Duty to Collect.** A free weekly publication, which does not qualify as a newspaper, is printed in Solano County, pursuant to a contract. The printer ships the printed paper to the publisher in San Francisco County by means of its own facilities.

First of all, under certain conditions the paper may qualify for the “printed sales message” exemption. If this is the case, the printing sales to the publisher are exempt from tax.

Second, the printer, as the retailer is responsible for the sales tax, but may collect sales tax reimbursement from the purchaser pursuant to agreement. The purchaser owes the district use tax which the retailer may have a duty to collect. The printer makes its sales in Solano County, outside of any taxing district and is responsible for sales tax at the statewide rate. The giving away of tangible personal property constitutes a taxable use of such property which occurs where the donation is made, in this case, the county of San Francisco. Since the purchaser is liable for use tax, the publisher owes the use tax. If the printer makes sufficient deliveries into San Francisco County, or has sales agents or other representatives there, the printer has a duty to collect such use taxes, measured by its charges. 9/9/91.

[700.0080](#) **Executory Contracts.** Local sales and use taxes apply even though the contract under which a sale is made was entered into prior to the effective date of the local tax. 6/27/56.

[700.0100](#) **Former Local Exemptions of Government Bodies.** The former exemption of the state and its governmental instrumentalities, such as school districts, no longer applies in counties and cities which have conformed their ordinances under the Uniform Local Sales and Use Tax Law, providing for state administration. 4/30/56.

[700.0120](#) **Fuel Oil.** To the extent that the sale of fuel is exempt from state sales tax under section 6385 of the Sales and Use Tax Law, it is also exempt from local sales tax. If, however, only a portion of the sale is exempt from State tax (i.e., if less than the total amount purchased is covered under a bill of lading), the sale of the portion not so covered is subject to local sales tax if purchased in a conforming county, except that portion that is consumed outside the county. 6/14/57.

[700.0140](#) **Fungible Goods.** The sale of fuel oil to common carriers is subject to local tax as to that portion consumed in the county. The portion consumed outside the county is exempt from local tax.

The same is true of gasoline if the fuel license tax were inapplicable or refunded so that the sale would not be exempt from state sales tax.

As to lubricating oils and greases, they are not consumed by combustion as in the case of fuel. Their use is a continuing use of the total amount purchased. If the oil and grease is used in vehicles traveling a greater number of miles outside the county than inside the county, the sale of the oil and grease falls within the exemption. 10/31/56.

[700.0150](#) **Increases in City Sales Tax Rates.** The increase of a city's Bradley-Burns Uniform Local Sales and Use Tax rate pursuant to a "revenue sharing" agreement with the county is not a tax "increase" requiring voter approval under Proposition 218. The county ordinance sets the local tax rate at 1.25 percent. Under a revenue sharing agreement between a city and the county, the city local tax ordinance operates as a revenue adjustment rather than as a tax-levying ordinance. As the city rate offsets the county rate, the overall Bradley-Burns Uniform Local Sales and Use Tax rate remains the same. Consequently, in the event a city's tax-rate agreement with its county provides for an increase in its local tax rate in a particular year, that increase does not need to be approved by the voters. 2/16/05. (2006-1).

(Note: During the pendency of the Triple Flip (Revenue and Taxation Code section 7204, operative 7/1/04), the local tax rate is reduced from 1.25 percent to 1 percent.)

[700.0160](#) **Lease Contracts—Rentals When County Becomes Conforming.** If property has been placed in rental service in a county prior to the time the County adopts a State-Administered Local Sales and Use Tax Ordinance, amounts received under the lease agreement after the county adopts such an ordinance are not subject to the local tax. 4/1/59.

[700.0169](#) **Local Tax Allocation.** A California county is building a regional medical center inside a city within the boundaries of the county. There are multi-million dollar

purchases of materials, fixtures, and machinery and equipment used to build the medical center. Medical equipment will be purchased and installed later in order to enable the renter to operate as a hospital. The items in question were purchased from out-of-state vendors without the participation of any in-state offices any of those vendors may have. The installing contractor never obtains title to the property purchased by the county.

Under these facts, the contractor building the medical center is installing customer-furnished property rather than property it furnishes. As a result, the project is not a construction contract for sales and use tax purposes. Rather, it provides for the purchase of tangible personal property by the county for use in California. The county owes use tax on that use (section 6201). As the items at issue are delivered directly to the jobsite in the city, the first functional use occurs there. Therefore, the city's local use tax ordinance applies to these transactions. 1/19/96.

[700.0170](#) **Local Tax Allocation.** Shipments of goods by common carrier from an out-of-state location, to California consumers, are generally subject to the use tax not the sales tax. This is true, even if the order was placed at the seller's California sales office. For purposes of the local tax, retailers who sell from both a California location and an out-of-state location are required to allocate their out-of-state sales to the county to which they ship the merchandise, rather than to the California location at which the order was placed. 1/9/90.

[700.0175](#) **Local Tax Rate New City.** A county's Local Sales and Use Tax ordinance contains a clause rendering the ordinance inoperative “. . . should any city within the County increase the rate of its sales or use tax above the rate of .95%.” The fact that a newly incorporated city in the county adopts a Local Sales and Use Tax with the rate of 1% does not cause the county ordinance to become inoperative.

In the unpublished case of *City of Dublin v. County of Alameda*, the court, following the cardinal rule of statutory construction, said that words in an ordinance must be given their plain and ordinary meaning. Since the new city did not raise its rate to 1%, the county ordinance was not rendered inoperative. 9/28/92.

[700.0176](#) **Los Angeles Municipal Code Section (MC) 63.92.1 Tax.** MC section 63.92.1 imposes a business license tax for the privilege of storing fuel products at the Los Angeles Airport. The incidence of the tax is on the person providing the fuel products at the airport (exercising the privilege) and not the user of the product. The state and local use tax is measured by the sales price of the property (section 6201), whereas the MC tax is measured by the amount of product stored. The measure of tax is not determinative of its nature but is given some weight in the analysis. (*Weekes v. City of Oakland* (1978) 21 Cal.3d 386, 397–398.)

Finally, the revenues derived from this tax do not go into Los Angeles' General Fund but into a special fund for the airport. Thus, under the above authority, the tax levied by MC 623.92.1 is not substantially similar to a local use tax and so does not violate section 7203.5. 2/29/96.

[700.0178](#) **Notice of Misallocation.** Notice from a taxpayer regarding misallocation of tax to one city on a tax return is not automatically notice that other cities are affected. Whether notice of an error for one city can be notice as to other cities depends on the facts and the contents of the notice. 11/23/94.

[700.0180](#) **Order Placed Out-of-State.** Local sales tax applies if merchandise is delivered to a California consumer from the seller's California warehouse even though the order may be placed with an out-of-state office of the seller. 4/8/65.

[700.0190](#) **Property Transshipped to Offshore Platforms.** Property delivered to the customers warehouse and subsequently shipped to an offshore platform is subject to the Bradley-Burns Local Use Tax. California's coastal counties jurisdiction extends outward to the three mile limit. 12/6/90.

[700.0196](#) **Reallocation of Revenue.** The taxpayer notified the Board by letter dated March 29, 1993 that the taxpayer was reporting tax under an incorrect Tax Area Code (TAC) and requested reallocation to a particular city. The Board's file indicated that the error was corrected on July 1, 1993. However, an error in the computer's registration field prevented the on-line correction from going through so that all periods subsequent to the third quarter 1993 went to a different jurisdiction. On October 25, 1995, the Board discovered the error.

Facts that are actually in possession of the Board do not constitute knowledge of an erroneous allocation unless the taxpayer, an employee or the Board, or some other person questions the correction of the local tax allocation. In this case, the Board records showed that the original error was corrected on July 1, 1993, effective back to April 1, 1992. The taxpayer's records indicated that the error was cleared on July 1, 1993. There is no indication in the documents available at the time that the Board had any knowledge that the error was not corrected for subsequent periods. Consequently, the October 25, 1995 date (date Board employee discovered the error) constitutes a notification in the fourth quarter of 1995 of a new error. As a result, section 7209 does not authorize reallocation back further than the first quarter 1995. 1/19/96.

[700.0200](#) **Resale Certificates by Municipality.** A municipality holding a seller's permit may not use resale certificates in the purchase of property for consumption from out-of-city suppliers and thus be able to report and pay local tax on such property with its annual returns, so that city monies paid for local use taxes would be allocated to the city. Such a use of resale certificates would be improper. 7/9/63.

[700.0210](#) **Sales by Fueling Network.** A fueling network has three parties involved in each network transaction: the "host participant," the "foreign participant," and the "trucker." The host participant is the person who physically provides the fuel. The foreign participant is the party who contracts with the trucker for the sale of fuel to the trucker.

Each participant has its own truckers to whom it issues network cards, and enters into agreements with each trucker for the sale of fuel at a specific price. This price is confidential; whenever a sale is made within the network, the host participant is never apprised of the retail selling price of the fuel. For participation in the sale of the fuel through the network, the host participant is reimbursed for its cost of the fuel, as determined by the OPIS price at the time of the sale, plus actual freight charges and a previously agreed upon network allowance.

When the foreign participant is engaged in business in this state, the host participant is a seller making a sale for resale to the foreign participant. Thus, the retail sale is made by the foreign participant directly to the trucker (consumer) with whom it has an agreement for the sale of fuel. As the negotiations leading up to the sale are entirely between the foreign participant and the trucker, the location of the place of business of the foreign participant is the place of sale of the fuel for local tax purposes under Regulation 1802(a)(2). The same holds true for district taxes. (Regulation 1822(a)(2).) However, the local and district tax consequences differ.

The local sales tax would be allocated to the location of the foreign participant's place of business, but the sale would be subject to the district use tax, if any, of the location in which the host participant delivered the fuel. (Regulation 1823(a)(2)(B).) For purposes of collecting the tax, the foreign participant would be considered engaged in business in the district under Regulation 1827(c)(2) and so required to collect its use tax. (Regulation 1827(a).)

When the foreign participant's place of business is located out of state and is not engaged in business in the state, the host participant is deemed the retailer under the second paragraph of section 6007. The applicable local tax is that of the location of the host participant's place of business. (Regulation 1802 (a)(1).) If the host participant is located in a taxing district, the transaction (sales) tax of that district (or districts) applies to the sale. Thus, the tax rate in effect at the host participant's location will apply whether the foreign participant is engaged in business in this state (and thus, the retailer) or not (meaning that the host participant is deemed the retailer). (Regulation 1823(a)(1).) 1/29/96.

**700.0212 San Francisco City and County Business License Tax.** The San Francisco City and County license tax on gun dealers, which was raised from 1.5% of gross receipts to 3%, is not a tax on the consumption of tangible personal property. It is also not a tax "passed through the customers." Therefore, it is not "substantially similar" to a sales and use tax so as to trigger the provisions of section 7203.5. 8/9/96.

**700.0214 Seller's Permits for County Departments.** County departments and employees cannot obtain a seller's permit so that they can purchase property for resale to other departments in the same county for local tax allocation purposes. For a sale to occur there must be a transfer of title to or possession of tangible property for a consideration from one person to another. Since the county, its departments, and its employees are a single "person" for sales and use tax purposes, there can be no sale. 5/30/86.

[700.0220](#) **State Purchases.** Where a sale to the state takes place in a county without a local tax the vendor will not be asked to bill the tax, but to the extent applicable, the use tax of the city or county of use will be paid directly by the purchasing agency. 4/30/56.

[700.0230](#) **Transfer of Funds to Local Agency.** Under section 7204, local tax revenue collected by the Board must be transmitted to the conforming jurisdiction from whose tax it was derived. The Board cannot enter into agreements with an agency and a city to split the revenues derived from the agency's tax between the agency and city.

Under the local tax scheme, the Board contracts with each conforming agency to administer and enforce its tax and cannot contract to administer two taxes under one agreement. Thus, the Board could not agree to collect the tax on behalf of one agency yet give the revenue to another. It can only agree to transmit the revenues to the agency imposing the tax. However, what the agency does with the money after the revenue is transmitted is its business. 12/17/93.

[700.0240](#) **Use in Different Counties.** In applying the use tax to property first used outside the taxing county, the property is to be considered as purchased for use in the taxing county only if it is principally used there. 3/7/58.

[700.0260](#) **Use in Interstate Commerce or Outside State.** Local use tax does not apply to items placed in use outside this state and thereafter used entirely outside this state, or continuously in interstate or foreign commerce, no intrastate use being made in California. 5/12/66.

[700.0270](#) **Use Tax – In-state Sales Agents.** Out-of-state retailers with no sales offices in California may have sales representatives operating in this state. The sales agents are employees of the retailer and may be domiciled in California or may be sent in from out of state. When these sales representatives make sales to California purchasers and title to the tangible personal property sold passes to the purchaser outside California, the sales are subject to use tax when the tangible personal property is delivered to the purchaser in this state.

The residency status of the employee affects the way the local use tax revenue is reported. If the person negotiating the sales is an employee of the retailer and is domiciled and routinely conducts sales negotiations here, the employee's residence would be considered an in-state place of business of the retailer under Regulation 1620(a)(2)(A). As a result, the order is not sent by the purchaser directly to the retailer's out-of-state office. As one of the criteria for direct allocation required by Regulation 1802(c)(1) – the purchaser sending the order for the property to the retailer at an out-of-state location – is not satisfied in such situations, the local use tax must be reported to the place of first functional use through the medium of the county-wide pool.

If, however, the employee negotiating the sales in state is not domiciled here, there is no local place of business of the retailer participating in the sale under

Regulation 1620. The sale must then be subject to use tax. Under Regulation 1802(a)(2), an employee's activities are attributed to the sales office out of which the employee works. Thus, it is entirely proper to regard the order as having been placed directly with the retailer's out-of-state office. If the other criteria of subdivision (c)(1) were met, then the local use tax would be reported directly to the location of the place of first functional use. 7/15/03. (2004-1).

**700.0280 Use Tax Direct Reporting.** The taxpayer is a wind turbine generator developer. It purchased turbines for installation on realty in California. The taxpayer is the ultimate purchaser/consumer of the wind turbine generators. It obtained building permits from both County A and City B and hired the contractors to install the turbines. The vendor is located out of state and is not registered to collect use tax. The taxpayer installed 10 turbines in the city and 64 in the unincorporated area of the county. It filed individual use tax returns reporting the total purchase price as about \$48 million.

The taxpayer is the consumer so the installation contracts do not carry sales or use tax consequences under Regulation 1521 even though the turbines are affixed to real property. Under Regulation 1802(c)(2), a person required to report and pay use tax to the Board who makes a purchase of \$500,000 or more shall report the local use tax directly to the location of the place of use rather than through the county-wide pool. Since the taxpayer purchased the turbines from an unregistered out-of-state vendor, it must self-report the use tax on these purchases. Assuming that the purchase and installation of all of the turbines was pursuant to one contract, the purchase price exceeds \$500,000 in total. The taxpayer presumably does not negotiate sales at the locations where the turbines are affixed, so those locations cannot be issued seller's permits. Therefore, the local use tax derived from these purchases should be reported directly under the regulation to the two jurisdictions in which the turbines were installed. (7/15/03). (2004-2)