

702.0000 TRANSMITTAL, LIMITATION, REDISTRIBUTION OF LOCAL TAX

702.0010 Access to Confidential Information by Consulting Firms. In order for the Board to legally provide confidential tax information to a person other than an officer or employee of the local jurisdiction, a resolution must exist which certifies that the consultant has an existing contract with the local jurisdiction to examine sales and use tax records. Once a contract has expired or been terminated, it is not “an existing contract” and cannot satisfy the requirement of section 7056(b)(1)(A). Therefore, the Board should discontinue supplying confidential information to a local jurisdiction’s consulting firm once the Board learns that the jurisdiction’s contract with the consultant has expired or been terminated. The Board cannot wait for the resolution to be rescinded before stopping the disclosure of confidential information to the consultant. The local jurisdiction’s current resolution remains valid as to the release of information directly to the local jurisdiction. If the local jurisdiction provides the Board with written notification that it has entered into a new contract with the same consultant which meets the requirements of section 7056(b)(1), the Board can resume providing information under the current resolution. 8/8/97. (M98–3).

702.0025 Allocation Errors Due to Registration Change. The date of knowledge of local tax allocation errors arising out of a registration change is not the date of the change but the date the Board’s staff member questions the registration, without regard to the reason the error occurred. The person raising the issue need not be the person who actually reviewed the change of registration list. This rule applies when the error is caught by a Board staff member. Otherwise, the date-of-knowledge rules involving inquiries from participating jurisdictions apply. 5/1/96.

702.0175 Date of Knowledge of Improper Distribution. The date of knowledge is the date on which the Board receives a communication with facts which indicate the probability of an improper distribution and such reported allocation is later found to be erroneous. The mere providing of a list of potential misallocations and no specific information regarding the facts which lead to believe there is a misallocation does not constitute a date on which the Board obtains knowledge of an improper distribution. 6/10/92.

702.0285 Fees on Airport Rental Car Operations. Sacramento County imposes a fee on rental car companies on the grounds of the Sacramento International Airport and on off-airport rental car companies.

The fees exacted from on-airport providers are by contract rather than ordinance. Therefore, since the obligation to pay fees is created by contract between the airport and the provider, the fees are not taxes at all. (*Perry v. Washburn* (1862) 20 Cal. 318, 350.) Therefore, these fees collected from on-airport providers do not conflict with Sacramento County’s local sales and use tax ordinance.

The fees collected from off-airport providers, however, are imposed by Sacramento County Code Ordinance Chapter 11.09. The rate set by resolution is 10 percent of gross receipts, but only those generated by airport-related customers. The resolution exempts from the measure of the fee the first \$12,500 per month of gross receipts. Neither the resolution nor Chapter 11.09 provides that the rental company may collect reimbursement for these fees directly from the customer. Also, the rental car companies do not separately pass the fees through to their customers.

Based on the California Supreme Court case *Weeks v. City of Oakland*, the fee on off-airport car rental companies is exactly what it says it is: a fee imposed on rental car companies located outside the Airport for the privilege of coming onto its property to rent cars to customers. The resolution makes it clear that a primary consideration for the fee is to prevent off-site operators from having an unfair advantage over on-airport operators and to provide the latter a disincentive to move off the Airport when their contracts come up for renewal. As the incidents of the fee indicate that it is not sales or use tax, the fact that it is measured by gross receipts does not convert the fee into a use tax. The lack of a pass-through feature is also highly important. Thus, the fee is not substantially similar to a sales or use tax and so is not effectively “preempted” by the State under section 7203.5. 11/22/96.

702.0400 Offsets—District Taxes. The overpayment of taxes imposed by one taxing jurisdiction such as a district transportation tax cannot be used to offset state sales tax, Bradley-Burns Tax or other district

taxes. While the Board administers and enforces the taxes, each jurisdiction's tax is individually imposed and may not be offset against another jurisdiction's tax. 4/28/97.

702.0500 Offset Portion. Section 7204.1(a)(4) defines "offset portion" as the greater of \$50,000 or "20 percent of the local agency's quarterly taxes." No method of determining the "quarterly taxes" is specified. Since a city presumably bases its request for offset treatment on the most recent revenue stream, it is reasonable to calculate the offset portion using the average of the last four quarterly collections. 8/12/97. (M98-3).

702.0900 Reallocation—First Knowledge. The date on which first knowledge of local tax misallocation is received at any location or by any employee of the Board is the date of first knowledge for purposes of reallocation. However, the "knowledge" of misallocation is limited to the locations of the taxpayer referred to in the source of the knowledge. If, for example, the source is a letter from the taxpayer which mentions misallocation between two of ten locations operated, subsequent discoveries of misallocation between other locations will have a different date of first knowledge, determined by when the subsequent discoveries are made. 7/27/90.

702.1010 Reallocations—Limitation Period. Under section 7209, the Board may reallocate local tax revenue through two quarters prior to the quarterly period in which it receives facts indicating that there has been an improper distribution of local tax revenue. Where a reallocation has been previously made and new facts merely correct the amount of the original transfer, a further transfer is permitted based on the original date of knowledge. On the other hand, where the fact pattern goes to the substantive issue of the place of sale or use as in, for example, a request to further reallocate funds due to discovery of a new sales office, then a new date of knowledge has been established. However, the same rules regarding reallocation of misallocated amounts apply to a reallocation. Thus, if a reallocation is incorrect and the Board receives new information showing the error within two quarters of the misallocated reallocation, the misallocated amounts can be reallocated. 5/25/95; 1/7/97.

702.1050 Redistribution of Local Tax—When Not Done. Uniform Local Sales and Use Tax Law section 7209 provides that the Board "may" redistribute local tax. The word "may" used in legislation is to be given its common and ordinary meaning and to be construed as permissive or conferring discretion. It is to be construed as mandatory only when it appears from the terms of the statute in which it is used that it was the clear policy and intent of the legislature to impose a duty, and not simply to confer a discretionary power. Section 7209 was enacted not to confer reallocation authority upon the Board but to put a limit on reallocations in order to avoid causing the losing city severe financial hardship. The legislative history of section 7209 indicates that the Legislature wanted the Board to have discretion in deciding whether or not to make a reallocation.

Local tax revenue should not be reallocated in circumstances where the factual and legal issues that resulted in a prior misallocation are only just now being resolved. For instance, some transactions, like Internet sales, are evolving areas with new issues arising all the time. In view of the fact that the losing city will have already spent the money previously allocated to it, reallocations should not be made under such circumstances. 10/30/02. (2003-3).