



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	02/11/14	Bill No:	Senate Bill 983
Tax Program:	Local Sales and Use	Author:	Hernandez
Sponsor:	City of South El Monte	Code Sections:	RTC 7205
Related Bills:		Effective Date:	01/01/15

BILL SUMMARY

This bill allocates the 1% percent Bradley-Burns Uniform local tax on fuel sold through card lock network systems to the place in which the fuel is delivered into the vehicle.

ANALYSIS

CURRENT LAW

Under existing law, the Board of Equalization (BOE) administers the **Bradley-Burns Uniform Local Sales and Use Tax Law**,¹ which authorizes counties to impose a local sales and use tax. This tax rate is fixed at 1% of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use within the county.

Under current law, cities are authorized to impose a local sales and use tax rate of up to 0.75%. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1%.

Of the 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes and restricted to road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. In California, all cities and counties impose Bradley-Burns local taxes a total uniform rate of 1%.

RTC Section 7205 specifies the “place of sale” for purposes of the local sales tax as the place of business of the retailer. If a retailer has only **one place of business** in California, all California retail sales in which that place of business participates occur at that place of business. The BOE allocates the local sales tax to the city, county, or city and county in which that place of business is located, even if title to the property passes to the purchaser outside the jurisdiction in which the retailer’s business is located, or if the property is never within the jurisdiction in which the retailer’s business is located. Therefore, if a California card lock operator (i.e., a retailer that sells fuel as a member in a card lock network) has only one place of business, the local tax derived from fuel sales is allocated to the city, county, or city and county in which the card lock operator’s place of business is located, even if the fuel is delivered to the customer through a card lock station of a different retailer in the network that is located in a different jurisdiction.

If a retailer has **more than one place of business in California**, the place of sale is determined in accordance with BOE regulations.

¹ Part 1.5 of Division 2 (commencing with Section 7200) of the Revenue and Taxation Code (RTC).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

Sales and Use Tax 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 subdivision (a)(2)(B), if a retailer has more than one place of business in this state participating in the sale, then the place of sale is where principal negotiations are carried on. Therefore, a California card lock operator with more than one California place of business participating in the sale is required to allocate the local tax to the local jurisdiction in which that sale was principally negotiated, regardless of where any fuel was actually delivered into the vehicle.

The BOE has published several Sales and Use Tax Annotations (hereafter Annotation)² related to card lock network fuel transactions that help to explain how tax applies to these fuel sales. [Annotation 700.0210](#) (01/29/96) describes the allocation of local taxes when the card lock operator who contracts with the customer (trucker) for the sale of card lock fuel is in one county but the card lock operator who delivers the fuel is in another.

If an out-of-state card lock operator negotiates its sales outside California, local tax is allocated as follows:

- 1) Where the out-of-state card lock operator is engaged in business in this state, the out-of-state card lock operator is the retailer making the retail sale to its customer (i.e., trucker). The out-of-state card lock operator is responsible for reporting any tax due on the sale made in California. Generally, the local tax is allocated to the location of the card lock station supplying the fuel in accordance with Regulation 1802, subdivision (c).
- 2) Where the out-of-state card lock operator is not engaged in business in this state, under current law,³ the sale is deemed to be a retail sale by the California card lock operator who provides the fuel. When the customer (trucker) of an out-of-state unpermitted card lock operator purchases fuel in California at a California card lock operator’s card lock station that transaction is considered a drop shipment. The applicable local tax is that of the location of the California card lock network operator’s place of business.

Sales of Jet Fuel. Under current law,⁴ the place of sale for *all* jet fuel sales for purposes of local sales tax is the point of delivery of the fuel into the aircraft, even if other California places of business of the retailer participate in the sale. Current law also contains specific provisions with respect to the local tax allocation of jet fuel delivered to aircraft at San Francisco and Ontario international airports and at airports located in a different local jurisdiction than the jurisdiction that owns or operates the airport (referred to as “multijurisdictional airports”).

PROPOSED LAW

This bill amends RTC Section 7205 to specify that, for purposes of allocating the local tax on sales of fuel made through a card lock network, the place of sale is the point of delivery of the fuel to the vehicle.

² Annotations are summaries of the conclusions reached in selected opinions of attorneys of the BOE’s Legal Department and are intended to provide guidance regarding the interpretation of the BOE statutes and regulations as applied by staff to specific factual situations.

³ RTC Section 6007; California Code of Regulations, title 18, Regulation 1706.

⁴ RTC Section 7205, subdivision (b)(2); RTC Section 7204.03; California Code of Regulations, title 18, Regulation 1802, subdivision (b)(6)

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The bill defines “card lock system” to mean a system where owners of unattended card lock fueling stations form a network whereby customers may purchase fuel at any of the network’s participating fueling stations by use of a card issued to the customer, and where prices are not posted at the pump and no receipt is given at the time of delivery.

The bill takes effect on January 1, 2015.

CARD LOCK NETWORK FUEL TRANSACTIONS

A card lock network fuel system is comprised of self-service fuel stations that are often located in commercial or industrial areas. The card lock network generally is used by commercial, industrial, or governmental fleet customers who are issued encoded cards to access pumps throughout the system.

In a typical card lock agreement, a customer contracts to purchase fuel from a particular card lock operator, but is able to purchase fuel from any card lock operator within the network, both inside and outside California. Both California-based and out-of-state card lock customers can obtain fuel from any card lock station within the network throughout the United States.

When a customer acquires fuel from a card lock operator other than the one they contract with, the “host participant” is the card lock operator who physically provides the fuel. The “foreign participant” is the card lock operator with whom the customer contracted for the sale of the fuel.

Card lock fuel sales are typically made pursuant to contracts negotiated prior to actual delivery of the fuel. The fuel price is generally based on a formula contained in the contract. This price is confidential and a host participant is never apprised of the retail selling price of the fuel between a customer and a foreign participant. The host participant’s sale to the foreign participant is a sale for resale, while the foreign participant makes a retail sale to its customer. The host participant is typically reimbursed for its cost of fuel, fuel freight charges for the fuel, and the negotiated network surcharge.

Fuel prices generally are not posted at the pump, and if posted, do not apply to sales to card lock customers.

Card lock network fuel systems utilize a transaction processor (clearinghouse) that summarizes transactions made by each card lock operator. Card lock customers receive a statement from the billing office of the card lock operator with whom they contract which itemizes the amount of fuel delivered and the price charged.

LEGISLATIVE HISTORY

In 1998, AB 66 (Ch. 1027, Baca) amended Section 7205 of, and added Section 7204.03 to, the Bradley-Burns local tax law to change the place of sale on jet fuel. When a jet fuel retailer has more than one place of business in California and the principal sales negotiations occur in California, the local tax is allocated to the local jurisdiction where the jet fuel is delivered into the aircraft. The measure also contained provisions with respect to the local tax allocation on jet fuel sales delivered to aircraft at San Francisco and Ontario International airports, as well as airports located in a different local jurisdiction than the jurisdiction that owns or operates the airport—referred to as “multijurisdictional airports.”

In 2005, AB 451 (Ch. 391, Yee, operative January 1, 2008) required that *all* local tax on jet fuel sales be allocated to the point of delivery into the aircraft, regardless of whether the jet fuel retailer has one or more than one places of business in California.

A similar jet fuel local tax allocation bill, AB 1282 (Mullin & Ruskin, 2005) would have deleted the provisions related to “multijurisdictional airports” and provided that the place of jet fuel sales is the point of delivery of the fuel into the aircraft whether or not the retailer has more than one place of business in this state, and regardless of where the contract was negotiated. This bill failed in the Assembly Revenue and Taxation Committee.

Other local tax allocation legislation includes SB 1114 (Brulte) and AB 376 (Chavez) of the 2001-02 Legislative Session which would have provided that, for purposes of allocating the local tax on concrete batch plant sales by retailers with more than one place of business California, the place of sale is the point of manufacture of the concrete. Both bills were held in Assembly Appropriations Committee. An identical bill, AB 553 (Chavez), was introduced in 2003 but was also held in Assembly Appropriations Committee.

COMMENTS

- 1. Sponsor and Purpose.** The City of South El Monte is sponsoring this bill. According to the author’s office, the current local sales tax allocation method for card lock fuel sales poses a problem for local governments with card lock stations in their jurisdictions. The heavy vehicles that primarily use these stations cause substantial wear and tear to city streets as well as create traffic congestion and reduced air quality. Cities which house card lock stations, but do not receive any of the local tax revenues, must absorb the cost to repair the city’s infrastructure and pollution mitigation.
- 2. Impact of this bill.** This measure proposes to allocate the local tax based on the location of the card location from which the fuel is delivered into the vehicle. For example, a California card lock fuel system network retailer with its headquarters in the City of Davis in Yolo County where all sales are negotiated, may own and operate ten card lock stations within Yolo and Solano counties. Some of these stations are located within the incorporated areas (cities) and unincorporated areas of the county. This bill shifts the local tax revenue allocation from the City of Davis, where the principal sales negotiations occur, to the jurisdictions in which the card lock stations where the trucker takes delivery of the fuel are located.
- 3. It will be necessary to issue sub-permits to each of the card lock operator’s unattended card lock stations.** Current law⁵ does not generally require card lock operators to hold a subpermit for each of its unattended card lock fuel stations. Sales and Use Tax Regulation 1699, *Permits*, does not require permits for warehouses or other places at which merchandise is merely stored without customer interaction, and are maintained in conjunction with a permitted business location. Although customers take delivery of the fuel at the unattended card lock stations, the BOE considers these stations to be similar to warehouses.

In administering these provisions, the BOE would need to issue a sub-permit to each of a card lock operator’s unattended card lock stations. The card lock operator would file a consolidated sales and use tax return, including a supplemental local tax

⁵ RTC Section 6066, subdivision (a); California Code of Regulations, Title 18, Regulation 1699, subdivision (a).

schedule, allocating the 1% local taxes among the cities and unincorporated areas of counties in which the card lock operator's card lock fuel stations are located.⁶

4. **Card lock operators will have to allocate the 1% local tax on sales made at other card lock operator fuel stations.** Card lock operators will be required to file an additional local tax schedule and allocate the 1 percent local tax on its sales of card lock fuel made at other card lock operators' fuel stations.
5. **Constitutional concerns.** Proposition 1A, approved by the voters in November 2004, added Section 25.5 to Article XIII of the Constitution, entitled "Protection of Local Government Revenues." This section provides that the Legislature shall not enact a statute to, among other things, change the method of distributing revenues derived under Bradley-Burns law. Changing the way the 1% local sales tax revenues would be allocated on card lock fuel sales possibly could be viewed as changing the method of distributing revenues, and therefore be subject to litigation based on Proposition 1A.

COST ESTIMATE

The administrative costs are absorbable.

REVENUE ESTIMATE

According to the U.S. Census, approximately 1,458 establishments were classified as "Other Gasoline Stations" in California in 2011. An unknown number of these establishments could be card lock sites. However, we assume all are card lock sites for the purposes of this analysis. According to data obtained from an investor company presentation, card lock sites can average 2.27 million gallons of gasoline and diesel per year. We assume this figure in calculating revenues. According to 2012 BOE data, the average price per gallon of fuel was \$4.13 in California. Thus, the annual Bradley-Burns local tax from California card lock sites is \$136.69 million (2.27 million gallons per year X \$4.13 per gallon X 1,458 sites in California X 1%).

Enactment of this bill would result in the annual shift of \$136 million in local sales and use tax revenues from one local jurisdiction to another. Since the law prohibits the BOE from divulging confidential information regarding taxpayers' accounts, identifying the actual dollar shift between each local jurisdiction inadvertently could divulge confidential tax information. Consequently, BOE staff cannot reveal the dollar amount by jurisdiction.

This bill would not affect state revenues.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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⁶ Schedule C – Detailed Allocation by Suboutlet of the 1% Uniform Local Sales and Use Tax