



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

DRAFT

Date:	<b>05/21/14</b>	Bill No:	<b><a href="#">Senate Bill 983</a></b>
Tax Program:	<b>Local Sales and Use</b>	Author:	<b>Hernandez</b>
Sponsor:	<b>City of South El Monte</b>	Code Sections:	<b>GC 53084.5</b>
Related Bills:		Effective Date:	<b>01/01/15</b>

**BILL SUMMARY**

This bill excludes a retailer that contracts to sell fuel through a card lock system from the definition of buying company under Government Code (GC) Section 53084.5.

**Summary of Amendments**

The previous version of the bill would have allocated the 1% 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. The measure now excludes card lock fuel retailers from the definition of “buying company” under existing law, which effectively prohibits agreements to rebate Bradley-Burns local tax revenues between local governments and card lock retailers who are buying companies.

**ANALYSIS**

**CURRENT LAW**

Under existing law, the Board of Equalization (BOE) administers the **Bradley-Burns Uniform Local Sales and Use Tax Law**,<sup>1</sup> 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 that participates in the sale, the

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

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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.

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)<sup>2</sup> 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.

**Buying Companies.** Under existing law,<sup>3</sup> every person desiring to engage in or conduct business as a seller within California is required to apply for a seller's permit. Regulation 1699, *Permits*, subdivision (h), provides guidelines for issuing a permit to a buying company. The regulation defines a buying company as a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services, for the other entity. The regulation further specifies that a buying company formed for the sole purpose of redirecting local tax from the location(s) of the vendor(s) to the location of the buying company shall not be recognized as a separate entity for issuing a seller's permit.

In addition, Regulation 1699 (h)(2) provides that a buying company is not formed for the sole purpose of redirecting local sales tax if it has one or more of the following elements:

- Adds a markup to its cost of goods sold in an amount sufficient to cover its operating and overhead expenses.
- Issues an invoice or otherwise accounts for the transaction.

The absence of any of these elements is not indicative of a sole purpose to redirect the local sales tax.

**Government Code.** Existing law<sup>4</sup> prohibits a local agency, including a city or county, from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion or rebate of any amount of Bradley-Burns local tax

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<sup>2</sup> 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.

<sup>3</sup> RTC Section 6066

<sup>4</sup> Government Code (GC) Section 53084.5, added by Senate Bill 27 (Ch. 4, Stats. 2009)

proceeds to any person for any purpose when both of the following apply:

- The agreement results in a reduction in the amount of Bradley-Burns tax proceeds that is received by another local agency from a retailer that is located within the territorial jurisdiction of that other local agency; and,
- The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

Existing law provides for specified exceptions to the prohibition, including an exception for an agreement to pay or rebate Bradley-Burns local sales and use tax revenue related to a buying company.

#### PROPOSED LAW

This bill amends GC Section 53084.5 to provide that a buying company does not include a retailer that contracts to sell fuel through a card lock system. The bill defines “card lock system” to mean a system in which owners of unattended card lock fueling stations form a network whereby customer 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 specifies that these provisions do not apply to an agreement entered into before May 1, 2014, to pay or rebate any tax revenue resulting from the imposition of a local sales and use tax relating to a buying company that is a retailer that contracts to sell fuel through a card lock system.

The bill takes effect on January 1, 2015. However, the bill’s provisions apply to agreements entered into on or after May 1, 2014.

#### COMMENTS

- 1. Sponsor and Purpose.** The bill is sponsored by the City of South El Monte in an effort to prohibit cities and counties from using Bradley-Burns sales tax rebates as an incentive to draw sales tax generating activities away from other communities. According to the author’s office, “In a race to find new revenue sources, some cities have become too willing to offer generous rebate packages for these fueling companies to move their sales offices into their city, rebating up to 65% of tax revenue, in some instances, at the expense of other cities that actually maintain the physical presence for these fueling stations. Prohibiting these types of agreements ensures that cities will not be able to give away public tax dollars to private oil companies and should eliminate the incentive for card lock fuel companies to be lured away by other cities.”
- 2. The May 21, 2014 amendments** rewrite the entire bill and delete the provisions which would have allocated the 1% 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.
- 3. This bill does not impact the BOE’s administration of the local tax.** Once the BOE disburses funds to the local governments based on the Bradley-Burns law and regulations, the locals then control how the money is spent or allocated. Thus, restrictions on tax rebates related to card lock fuel retailers have no impact on the BOE’s duties.

**COST ESTIMATE**

This bill does not impact the BOE's administrative costs.

**REVENUE ESTIMATE**

This bill does not impact the state's revenues.

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