

REVENUE AND TAXATION POLICY COMMITTEE
Legislative Agenda
Friday, April 16, 2021

Staff: Nick Romo, Legislative Representative
Johnnie Pina, Legislative Policy Analyst

1. SB 555 (McGuire) Local Agencies. Transient Occupancy Taxes. Short-Term Rental Facilitator. Collection. ([Full Text](#))

Bill Summary:

This bill would enact the Fair and Effective Collection of Due and Payable Transient Occupancy Taxes Derived from Short-term Rentals Arranged by the Short-term Rental Facilitators Act of 2021.

Bill Description:

This bill would authorize a local agency to delegate its authority to collect their locally imposed transient occupancy tax (TOT) on short-term rentals to the California Department of Tax and Fee Administration (CDTFA). Specifically, local agencies would also be able to enter into a contract with CDTFA for purposes of registration, rate posting, collection, and transmission of revenues necessary to collect and administer any transient occupancy tax imposed on a short-term rental.

All local charges collected by the department would be deposited in the Local Charges for Short-term Rentals Fund, which would be created by the State Treasury. The funding would be held in trust for the local agency and would not be used for any other purpose. Local charges would include of all taxes, charges, interest, penalties, and other amounts collected and paid to the department resulting from the imposition of the transient occupancy tax, less payments for refunds and reimbursement to the department for expenses incurred in the administration and collection of the local charges.

This bill would require an online short-term rental facilitator engaged in business in this state to be responsible for collecting from the purchaser any local charge imposed on a short-term rental by any local agency exclusively delegating its authority to the department to collect those charges and would require the online short-term rental facilitator to register with the department.

This bill would define a short-term rental to mean the occupancy of a home, house, a room in a home or house, or other lodging that is not a hotel or motel in this state for a period of 30 days or less and under any other circumstances specified by the local agency in its ordinance that is facilitated by an online short-term rental facilitator.

This bill would also make it a misdemeanor for any deputy, agent, clerk, or other officer or employee of the department, or any former officer or employee or other individual, who in the course of that individual's employment or duty has or had access to returns, reports, or documents required to be filed under this bill, to disclose or make known in any manner information as to the amount of any local charges or any particulars, including the business affairs of a corporation.

consider specific characteristics of the retailer to correctly determine the “place of sale,” and therefore correctly allocate the local share of Bradley-Burns sales tax:

For a retailer that has one location in the state, that location is determined to be the place of sale for all of its sales.

For a retailer that has more than one location in the state, CDTFA determines the location based on the location where principal negotiations occurred.

For a retailer that has no location in the state, but has a stock of property in the state from which it fills orders, CDTFA considers the place of sale as the location from which the property is shipped.

For a retailer that has no location in the state, and ships property from outside California, the transaction is subject to use tax, not sales tax, which is allocated to countywide pool of the jurisdiction where the property is shipped.”

Comments:

City Manager Sales Tax Working Group Recommendations

In fall 2017, a working group (Group) of city managers, representing a diverse array of cities, was convened by Cal Cities City Manager’s Department to help Cal Cities identify internal common ground on rapidly evolving e-commerce trends and their effects on the allocation of local sales and use tax revenue. After meeting extensively throughout 2018, the Group made several recommendations that were endorsed unanimously by Cal Cities Revenue and Taxation Policy Committee at its January 2019 meeting and subsequent Board of Directors meeting.

One recommendation, aligned with the intent of SB 792, requests a CDTFA analysis on the impacts of sales tax destination shifts.

Excerpt:

“Request/Require CDTFA Analysis on Impacts of Sales Tax Destination Shifts:

After discussion of numerous phase-in options for destination sourcing and allocation for sales taxes, the **group ultimately decided that a more complete analysis was needed to sufficiently determine impacts.** Since the two companies most cities rely on for sales tax analysis, HdL and MuniServices, were constrained to modeling with transaction and use tax (district tax) data, concerns centered on the problem of making decisions without adequate information. “

Good not Perfect

Analysis of potential changes to sales tax allocation remains constrained to modeling with transaction and use tax (district tax) data from about half of California’s 482 cities. The information required by SB 792 would provide tax analysts a more robust picture of the differences between online sales origin allocation (based on place-of-sale allocation) and destination allocation (based on where the item is shipped). This information is needed to move forward with data driven conversations about the future of the local sales tax.

SB 792, as drafted, remains a work in progress with the author working with CDTFA and tax experts to reduce the reporting burden on retailers and the department while ensuring more precise reporting of taxing jurisdictions. The measure should also clarify the form and manner by which CDTFA provides the reported information,

Honest Conversations amongst Family

The topic of sales tax allocation conjures up difficult conversations between “winners” and “losers” but to-date these discussions have been void of robust data for data-driven decision making. The city managers working group, made up of cities on both sides of the margins, agreed that information is good and needed. Staff believes that SB 792 has the potential to productively move conversations forward and examine more closely whether or not, or which, changes are beneficial to cities across the state and the communities we collectively serve. SB 792 does not make any substantive changes to sales tax allocations which staff believes is a prudent approach while discussion amongst city leaders is had.

Fiscal Impact:

The bill has no direct impact to city finances. CDTFA and reporting retails will incur costs of administration.

Existing Cal Cities Policy:

- Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)
- The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.
- Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.
- Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change. Sales tax rebate agreements involving online retailers are inappropriate because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one. Any type of agreement that seeks to lure a retailer from one community to another within a market area should also be prohibited going forward.
- Sales Tax Sourcing Rules: Support as League policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.

The League supports as policy allowing more direct reporting of use taxes related to construction projects to the jurisdiction where the construction activity is located by reducing existing regulatory threshold from \$5 million to \$100,000.

- County Pool Use Tax Allocations: Support the League working with the state California Department of Tax and Fee Administration to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered). Use Tax collections from online sales, including from the *South Dakota v Wayfair* Decision, should be shifted out of county pools and allocated to the destination jurisdiction whose Bradley Burns tax applies and not throughout the entire county.

Support-Opposition (as of April 12, 2021):

Support: None on file at this time.

Opposition: California Retailers Association
City of Fresno
City of Perris

Staff Recommendation:

Staff recommends a **support** position along with continuing working with the author, relevant policy committees, city managers, fiscal officers, and CDTFA to ensure the most adequate and least-burdensome collection as possible. Additionally, continue to work with the City Managers Department of the League of California Cities in furthering of actionable steps. Refer proposed action(s) of the Department back to the Revenue and Taxation Policy Committee.

Committee Recommendation:

Board Action: