



REVENUE AND TAXATION POLICY COMMITTEE
Friday, April 16, 2021
1:00 pm – 4:00 pm

Register for this meeting:

https://zoom.us/meeting/register/tJcrfuyurjliH9CKI3oOCdNRH9ksWjpk7Wsw

Immediately after registering, you will receive a link and confirmation email to join the meeting.

AGENDA

- I. Welcome
II. Public Comment
III. General Briefing
IV. State Budget and COVID-19 Fiscal Impact Update Informational
V. American Rescue Plan Update Informational
VI. Legislative Action (Attachment A) Action
VII. Sales Tax Briefing and Discussion (Part 2) Informational
VIII. Adjourn

Next Virtual Meeting: Friday, June 4, 2021, 1:00 pm – 4:00 pm

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:

- 1. Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or
2. A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at Cal Cities meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

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.

Background:

According to the Senate Governance and Finance Analysis:

Transient Occupancy Taxes. State law allows cities and counties to levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home, motel or other lodging unless the occupancy is for a period of more than 30 days. These taxes – commonly known as Transient Occupancy Taxes or TOTs – are typically collected by lodging providers as an itemized charge based on a percentage of a customer’s bill, who then remit proceeds to the local agency where the lodging was provided. In California, 431 cities and 54 counties levy a TOT, mostly for general revenue purposes, at rates from 3% to over 14%. According to the State Controller’s Office, TOTs generated more than \$2.6 billion in revenue for local agencies in the 2017-18 fiscal year.

Short-term Rentals. In recent years, Internet-based platforms like Homeaway, VRBO and Airbnb have facilitated increasing numbers of short-term rentals of homes and rooms within residences. Short-term rentals, also known as vacation-rentals, are usually an individual’s residential property, such as a home, room, apartment, or condominium they rent out to a visitor for fewer than 30 consecutive days. Generally, the home sharing industry involves three primary participants:

- (1) The home sharing platforms, such as Airbnb, that advertises residential properties offered for temporary rental and facilitates connecting renters with hosts for a fee, and process payment for the rental,
- (2) The consumer who is often referred to as the “renter” “guest,” or “visitor” of the residential property, and
- (3) The supplier, owner, operator, or “host” of the residential property. Short-term rentals are not a new practice, but the development of online hosting platforms, bookings, advertisements, and payments has increased.

Short Term Rental Agreements. Short-term rental platforms have entered into [voluntary agreements with cities](#), states, and nations to collect and remit taxes on behalf of its hosts. Agreements generally allow the local agency to audit the platform instead of the operator, but preclude platforms from disclosing to local information that could identify operators outside the terms of the agreement. The agreements generally state that the platform is not an operator for purposes of local ordinances or state laws, but that they will register as one for purposes of TOT collection.

Either party can usually terminate the agreement without cause with 30 days’ notice [emphasis added].

Fiscal Impact:

According to the most recent Senate Governance and Finance Analysis, “CDTFA states that local TOT revenue gain or loss cannot be determined.”

Cal Cities staff is concerned that in the short-term, upon potential passage of this measure, cities with voluntary collection agreements may experience TOT revenue losses following the platforms’ termination of those agreements in favor of the new state framework. Consequently, this will result in delays or new costs to scale up in-house collection operations or contract with a compliance vendor.

Existing Cal Cities Policy:

“The League supports legislation that would bolster existing local efforts to enforce local ordinances and revenue collection associated with short-term rentals.

Additional revenue is required in the state/local revenue structure. There is not enough money generated by the current system or allocated to the local level by the current system to meet the requirements of a growing population and deteriorating services and facilities.

Local Authority and Accountability

To preserve local authority and accountability for cities, state policies must:

- Ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fees, etc.
- Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
- Oppose any state or federal legislation that would preempt or threaten local taxation authority including but not limited to Utility User’s Taxes.
- Allow every level of government to enjoy budgetary independence from programs and costs imposed by other levels of government.
- Authorize a simple majority of the voters in a city or county to establish local priorities, including the right to increase taxes or issue general obligation bonds.
- Offer incentives to reward cities achieving program goals rather than withhold or reduce revenues to accomplish targets.”

Legal Rulings

Recent court rulings have clarified the extent of local authority to compel platform compliance and sharing of certain information to allow for oversight. Below are three of these cases.

In ***Homeaway.com v. City of Santa Monica***, the Ninth Circuit held that the City of Santa Monica’s ordinance, which prohibited hosting platforms from completing any booking transactions for properties not licensed by the city, and from collecting a fee for facilitating vacation rentals of unlicensed properties, was not preempted by the Communications Decency Act (CDA). The court explained that the hosting platforms faced liability only for performing unlicensed bookings, and not for the published content of the property listings. The Ninth Circuit also held the ordinance did not violate the First Amendment, reasoning that the ordinance, at most, only imposed incidental impacts on speech.

Airbnb Inc. v. City & County of San Francisco ended in a settlement in which the Platforms agreed to comply with an amended version of San Francisco’s ordinance that prohibited booking unlawful transactions but provided a safe harbor wherein any platform that complies with the responsibilities set out in the Ordinance will be presumed to be in compliance with the law.

In ***City & County of San Francisco v. Homeaway.com***, the First District Court of Appeal affirmed the superior court’s order granting San Francisco’s petition to enforce an administrative subpoena, **which required HomeAway.com, Inc. to disclose data about rental transactions involving accommodations located in San Francisco that were arranged using a HomeAway Web site.**

Comments:

According to the author, “SB 555 establishes a new, innovative, and streamlined statewide system for collecting and dispensing Transit Occupancy Taxes (TOT) revenue for online vacation hosting platforms. This bill will ensure that cities and counties can receive the revenues collected in their jurisdiction that they are entitled to. This revenue—projected to be in the high hundreds of millions—will be reinvested in fire and police services, local schools, libraries, and economic development projects that will promote healthy economies and safe neighborhoods. This would be a voluntary service available to cities and counties, but they would also be free to continue with their own TOT collection efforts and/or voluntarily agreements they have established with vacation rental platforms.”

Staff Concerns and Comments:

In alignment with existing Cal Cities policy, staff remains concerned that the adoption of the proposed framework could result in less effective and transparent TOT collection, the termination of existing and future voluntary collection agreements and has the potential to allow future state involvement in local regulatory authority.

While several cities have built-out local short term rental regulatory enforcement programs, often in partnership with tax compliance vendors, this solution may not fit all cities. For several cities, the [voluntary collection agreements](#) have been advantageous as they are locally negotiated and can include provisions such as those compelling platforms to require hosts to submit their city business license number in order to post a room on the platform website.

The establishment of a statewide system would certainly reduce the desire of platforms to enter into these agreements, in favor a unitary compliance mechanism, and may result in the swift termination of existing agreements which generally contain allowance for either party to sever the agreement in 30 days. The potential cost savings for the short term rental platforms could be a strong incentive to move away from the local agreements. SB 555 should aim to reduce revenue disruption to cities that currently have a collection agreement in place with one or more platforms.

For cities, it can certainly be more challenging to collect and enforce TOT collections from short-term rental hosts than it is with traditional hotels. This is in part due to the difficulty of identifying all short term rental hosts and guests within a city at any given time.

Staff contends that a state measure that intends to increase the collection of TOT should also assist in requiring platforms to disclose, to the extent allowed by law, transaction data for the purposes of proper collection and auditing.

As currently drafted, the language that does not provide sufficient authority, data collection, or sharing to ensure proper collection. Below is the language in full:

“(e) (1) The department shall make available to a requesting local agency any information that is reasonably available to the department regarding the proper collection and remittance of a local charge of the local agency by a short-term rental facilitator.”

Broader Implications

This measure is supported by online short-term rental platforms. Local agencies must be mindful that these platforms have pursued measures across the country to reduce local authority. So far, Arizona and six other states [have enacted local bans](#) on short-term rental regulations. The other states include Florida, Idaho, Indiana, Tennessee and Wisconsin. This measure is aligned with the platforms push for more standardized tax collection and regulation.

It is, however, important to note that this measure *does not impact* local control over the operation or enforcement of short-term rental ordinances within jurisdictions. Any measure(s) that impacts local authority in this space will be separately reviewed.

Wayfair and Issues with Voluntary Collection

SB 555 builds a collection framework in the vision of the Marketplace Facilitator Act which was adopted following the U.S. Supreme Court decision in *Wayfair v. South Dakota* that clarifies that states can charge and collect tax on purchases even if the seller does have a *physical* presence in the state. Online sellers are now required to register with CDTFA and collect and remit state and *local* sales taxes. The model has proven beneficial to cities particularly as online sale transactions have risen throughout the pandemic; under this framework sales tax collection has been broader and more exact.

Since the *Wayfair* decision and the adoption of the Marketplace Facilitator Act, voluntary collection agreements with short-term rental platforms have been called into question with preference for legally obligated collection through a similar state framework. SB 555 aims to broaden collection by requiring short-term rental platforms to register with CDTFA which could result in improved and increased collection from all short term rental platforms.

This shifts the legal responsibility for collecting local taxes and charges to the platforms rather than on a voluntary basis or through local efforts to compel collection and remittance by hosts. It is reasonable to assume that collections could improve if the platforms are legally responsible to do so rather than individuals who host rooms on their platforms.

Options

SB 555 is focused on an important issue of the need to improve collection of local taxes and charges from short-term rental activities across the state. In response to the growing industry, cities that do allow for short-term rentals to operate have taken one or more of the following actions 1) establish local enforcement and collection operations 2) contract with a compliance vendor such as host compliance or 3) enter in a voluntary collection agreement with one or more platforms.

Several cities currently do not have a program in place to collect TOT or enforce the requirement of hosts to do so; *committee members should consider whether cities should have an option to contract with CDTFA for TOT collection given the challenges of local enforcement and the potential lack of local resources. If so, under which circumstances?*

Support-Opposition:

(As of 3/22/21)

Support: Airbnb, Inc; California Asian Pacific Chamber of Commerce; California Hispanic Chambers of Commerce; Hispanic Chambers of Commerce of San Francisco; Homeshare Alliance Los Angeles; Huntington Beach Short-term Rental Alliance; Long Beach Hosting Club; Orange City Short Term Rental Alliance; Painters and Trades District Council Local 36; Rural County Representatives of California; San Francisco Chamber of Commerce; Sf.citi; Short Term Rental Alliance of San Diego; Sonoma County Board of Supervisors;

Opposition: None received.

Staff Recommendation:

Staff recommends an **oppose unless amended** position. Seek amendments to protect the option of voluntary collection agreements, ensure CDTFA and contracting cities have access to

adequate platform information to ensure proper collection, provide that registered platforms also support the costs of administration, clarify the protection of local tax rates, clarify that this measure does not pre-empt any local short term rental ordinances.

Committee Recommendation:

Board Action:

2. SB 792 (Glazer) Sales and Use Tax: Retailer Reporting (Full Text)

Bill Summary:

This bill would require retailers whose annual online sales exceeded \$1 million in the previous calendar year to track and report to the California Department of Tax and Fee Administration (CDTFA) the city or ZIP code where the purchaser resides for each sale within the state that is transacted online. The bill would direct retailers to report this information on the same schedule the retailer reports sales to the CDTFA.

Bill Description:

This bill aims to better inform the public's understanding of online transactions and the flow goods across the state. To do so, the bill would direct retailers to report tax district information of the purchaser on the same schedule on which they report sales. The bill would define "transacted online" as one where both:

- The purchaser's order and payment for the sale and purchase of tangible personal property is transacted and completed on an internet website or web-based application.
- The purchaser's order and payment for the sale and purchase of tangible personal property is not initiated by the retailer using the retailer's equipment at the retailer's place of business.

The new reporting requirement is intended to support the study of the impact of booming online sales on sales tax allocations across the state and to inform ongoing discussions of various sales tax allocation models.

Background:

Sales Tax

According to the Senate Governance and Finance Analysis:

"The Bradley-Burns Uniform Sales Tax Act allows all local agencies to apply its own sales and use tax on the same base of tangible personal property. This tax rate currently is fixed at 1.25% of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. Cities and counties use this 1% tax to support general operations, while the remaining 0.25% is used for county transportation purposes. In California, all cities and counties impose Bradley-Burns local taxes.

Bradley-Burns law specifies the "place of sale" for purposes of the local sales tax. Bradley-Burns sales taxes are allocated to the place of business of the retailer, unless the property sold is delivered by the retailer or his or her agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination, in which case no tax is collected. CDTFA must

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: