



STATE BOARD OF EQUALIZATION

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May 21, 2007

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Fourth District, Los Angeles

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State Controller

RAMON J. HIRSIG
Executive Director

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the May 31, 2007 Business Taxes Committee meeting. This meeting will address proposed amendments to Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Sales and Use Taxes*, regarding use tax transactions of \$500,000 or more.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on May 31, 2007**, in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director
Sales and Use Tax Department

RLH:llw

Enclosures

cc: (all with enclosures)
Honorable Betty T. Yee, Chairwoman, First District (MIC 71)
Honorable Judy Chu, Ph.D., Vice Chair, Fourth District
Honorable Bill Leonard, Member, Second District (MIC 78)
Honorable Michelle Steel, Member, Third District
Honorable John Chiang, State Controller, C/O Ms. Marcy Jo Mandel (via e-mail)



Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)
Mr. Mark Ibele, Board Member's Office, First District (via e-mail)
Mr. Steve Shea, Board Member's Office (*3 copies*), Fourth District (via e-mail)
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)
Mr. Ken Maddox, Board Member's Office, Third District (via e-mail)
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)
Ms. Melanie Darling, State Controller's Office (via e-mail)
Mr. Ramon J. Hirsig (MIC 73)
Ms. Kristine Cazadd (MIC 83)
Mr. Robert Lambert (MIC 82)
Mr. Randy Ferris (MIC 82)
Ms. Carole Ruwart (MIC 82)
Mr. Cary Huxsoll (MIC 82)
Ms. Janice Thurston (via e-mail)
Ms. Jean Ogrod (via e-mail)
Mr. Jeff Vest (via e-mail)
Mr. David Levine (MIC 85)
Mr. Steve Ryan (MIC 85)
Mr. Rey Obligacion (via e-mail)
Mr. Todd Gilman (MIC 70)
Mr. Dave Hayes (MIC 67)
Ms. Freda Orendt (via e-mail)
Mr. Stephen Rudd (via e-mail)
Mr. Joseph Young (via e-mail)
Mr. Jeffrey L. McGuire (MIC 92 and via e-mail)
Mr. Vic Anderson (MIC 44 and via e-mail)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Leila Khabbaz (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Chuck Arana (MIC 50)

AGENDA — May 31, 2007 Business Taxes Committee Meeting
Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by MSLLC
Action 1 -		
<p>Proposed revisions to Regulation 1802(d)(1)</p>	<p>(d) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.</p> <p>Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term “participating jurisdiction” means any city, city and county, or county which has entered into a contract with the Board for administration of that entity’s local sales and use tax.</p> <p><u>(1) APPLICATION OF USE TAX GENERALLY. DIRECT REPORTING BY RETAILERS. For transactions prior to December 31, 2007, —(1)—</u> When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.</p> <p><u>Operative January 1, 2008, for transactions of \$500,000 or more, if the seller is required to collect the local use tax on the transaction, except with respect to persons who register with the Board to</u></p>	<p>(d) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.</p> <p>Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term “participating jurisdiction” means any city, city and county, or county which has entered into a contract with the Board for administration of that entity’s local sales and use tax.</p> <p>APPLICATION OF USE TAX GENERALLY. (1) When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684) may, <u>and the other sellers</u> shall, report the local use tax revenues derived therefrom directly to such the participating jurisdiction <u>where the first functional use of the property is made.</u></p>

AGENDA — May 31, 2007 Business Taxes Committee Meeting
Regulation 1802, Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes

Action Item	Regulatory Language Proposed by Staff	Regulatory Language Proposed by MSLLC
	<p><u>collect use tax under Regulation 1684(c) (18 CCR 1684), then the seller shall report the local use tax revenues derived therefrom directly to the participating jurisdiction where the first functional use is made.</u></p> <p><u>Persons who voluntarily collect use tax under Regulation 1684(c) may, solely at their own discretion, report the local use tax revenues on transactions of \$500,000 or more directly to the participating jurisdiction where first functional use is made.</u></p> <p><u>(2) DIRECT REPORTING BY PURCHASERS</u> (2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.</p> <p>The amendments to paragraph (b)(4) and paragraph (d) shall apply prospectively only to transactions entered into on or after July 1, 1996. Paragraph (d) shall not apply to lease transactions.</p>	<p>(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.</p> <p>The amendments to paragraph (b)(4) and paragraph (d) shall apply prospectively only to transactions entered into on or after July 1, 1996. Paragraph (d) shall not apply to lease transactions.</p>

Issue Paper Number **07-005**



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed revisions to Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, regarding the direct allocation of the use tax to the jurisdiction of use

I. Issue

Should Regulation 1802(d)(1), regarding use tax transactions of \$500,000 or more, be amended to remove the requirements that (1) the order for the property is sent by the purchaser directly to the retailer at an out-of-state location, and (2) the property is shipped directly to the purchaser from outside California?

II. Alternative 1 - Staff Recommendation

As supported by The HdL Companies (HdL), the League of California Cities, the City of San Marcos, the City of Paso Robles, and the City of Glendale, staff recommends revising subdivision (d)(1) operative January 1, 2008, to remove the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California. Staff further recommends amending the subdivision to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more. Staff's proposed revisions are attached as Exhibit 2.

III. Alternative 2 – MSLLC Recommendation

As supported by the City of Los Angeles and Mr. Robert Cendejas, representing the City of Ontario, Mr. Albin Koch, MuniServices, LLC (MSLLC) recommends removing from Regulation 1802(d)(1) the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California. MSLLC also recommends amending the subdivision to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more. MSLLC's proposal is similar to staff's recommendation, except that it considers the proposed revisions to be clarifications of the original intent of the subdivision and applies the revisions retroactively. Revisions to Regulation 1802(d)(1) as proposed by MSLLC are attached as Exhibit 3.

IV. Background

Sales and Use Tax Regulation 1802 explains when local sales and use tax is directly distributed to a jurisdiction and when the tax is distributed through the medium of the countywide pool. Currently, subdivision (d)(1) provides that when the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in California from a point outside California, the transaction is subject to the local use tax of the participating jurisdiction¹ where the first functional use is made. Beginning July 1, 1996, for transactions of \$500,000 or more, retailers who are required to report California use tax on such transactions² are required to report the local use tax directly to the jurisdiction of first functional use. Prior to July 1, 1996, the tax was indirectly reported to the jurisdiction of first functional use via the countywide pool.

This issue was sent to the Business Taxes Committee (BTC) following the November 1, 2005, local tax allocation appeal by the City of Anaheim, et al., involving use tax transactions where the property was shipped from an in-state location. Although staff and the petitioners agreed that the appropriate tax in the City of Anaheim case was use tax, staff argued that the tax should be reported to the countywide pool because the transaction did not meet the regulation's requirement that the property be shipped directly to the purchaser from outside the state.³ In support of their proposed revisions, MSLLC references a November 4, 2004, City of Sacramento reallocation hearing where the Board decided in favor of direct allocation even though the order for the property was placed with a broker rather than directly with the retailer.

Staff met with interested parties on February 8, 2007, and March 22, 2007, to discuss the proposed changes to Regulation 1802(d)(1). Following these discussions, staff and interested parties generally agree to revise the regulation to remove the direct order placement and direct shipment from outside California requirements, and to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly. Unresolved is whether the revisions should apply retroactively or prospectively. MSLLC also disagrees with staff's estimated increase in workload as a result of the proposed revisions.

Staff received submissions from MSLLC, the City of Los Angeles, and the City of Ontario requesting retroactive revision. Submissions from HdL, the League of California Cities, the City of San Marcos, the City of Paso Robles, and the City of Glendale support the revisions, but request a prospective application. (See Exhibit 5 for submissions received following staff's second discussion paper. Only the letter portion of MSLLC's submission is attached; the full 67 page submission from MSLLC is available on the Board's website at www.boe.ca.gov/meetings/btc2007.htm under "MSLLC 4/6/07 submission.")

The Business Taxes Committee is scheduled to discuss this issue at its meeting on May 31, 2007.

¹ "Participating jurisdiction" means "any city, city and county, or county which has entered into contract with the Board for administration of that entity's local sales and use tax." (Regulation 1802(d).)

² This reporting requirement does not apply to retailers who are not engaged in business in California, but voluntarily register to collect California use tax as provided in Regulation 1684(c). (See Reg. 1802(d)(1).)

³ Whether the contracts in the City of Anaheim case should be considered as meeting the \$500,000 threshold was another issue in the appeal.

FORMAL ISSUE PAPERIssue Paper Number 07-005**V. Discussion**

Provisions not affected by the proposed changes. Under the revisions proposed by both staff and interested parties, transactions subject to the direct allocation provisions of 1802(d)(1) must continue to be subject to use tax and be in the amount of \$500,000 or more. Lease transactions will continue to be excluded from the direct reporting requirements. In addition, both staff and interested parties have proposed revisions to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more if they wish. These retailers would still not be *required* to directly allocate local use tax. The revision regarding voluntary filers merely incorporates the Board's current policy into the regulation.

The discussion below assumes that the transactions are subject to California use tax, are in the amount of \$500,000 or more, and are not lease transactions.

Placing the order for the property directly with the retailer out of state. Under the current provisions of Regulation 1802(d)(1), direct allocation of local use tax is not allowed unless the order for the property is placed directly with the retailer out of state. Accordingly, local tax is not allocated directly when the order for the property is placed with a broker or in-state sales representative.

Both interested parties and staff propose deleting the requirement that the order for the property be sent directly to the retailer at an out-of-state location. This revision would mean that out-of-state retailers would be required to directly allocate local use tax even when the order is placed with a broker or in-state representative. Interested parties believe this action is in accordance with the sponsors' original intent of the subdivision. That is, the purpose of the subdivision was to increase the situations in which host jurisdictions would welcome manufacturing or similar business operations because of the resulting Bradley-Burns revenues. The intent was to match local revenues with the infrastructure and service (security, police, and fire) costs associated with their production, and thus, stimulate industrial and commercial business activities and the creation of jobs. MSLLC believes eliminating this direct order placement requirement will increase taxpayer understanding of and compliance with Regulation 1802(d)(1). MSLLC explains that requiring out-of-state retailers to distinguish between transactions originated or consummated directly or indirectly in reporting their use taxes is usually impractical and often impossible.

Staff expressed concerns that out-of-state retailers will not have sufficient information to correctly determine where the property was first functionally used, since the retailer may not have any direct contact with the customer. However, staff believes the Board's Local Revenue Allocation Unit and Allocation Group will be able to investigate and verify that transactions of \$500,000 and over are reported accurately. Staff further believes the proposed revisions will make the regulation provisions consistent with the Board's decision in the City of Sacramento case.

Use tax transactions where the property is not shipped directly to the purchaser from out of state. Although it is not a common situation, use tax may apply when property is shipped from one California location to another California location. For example, when an out-of-state retailer that is engaged in business in California, but has no business locations in California, makes a retail sale by arranging for a California manufacturer or distributor to drop ship goods to the retailer's California customer, the transaction is not subject to the drop shipment rules of Revenue and Taxation Code section 6007 because the retailer is engaged in business in California. Since the out-of-state retailer has no business location in California, and thus no business location of the retailer had any contact with the transaction, the transaction would be subject to use tax.

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This unusual type of use tax transaction occurred in the City of Anaheim case. At the hearing, staff acknowledged that it was likely that the regulation was intended to apply to all use tax transactions of \$500,000 or more, not just those when the property was shipped directly to the purchaser from outside this state. The language of the first sentence of Regulation 1802(d)(1) was apparently taken from Regulation 1620, *Interstate and Foreign Commerce*, describing the most common use tax transaction. Both interested parties and staff propose deleting the requirement that the property be shipped directly to the purchaser from out of state. Staff believes that deleting this requirement will not have a broad impact, since the provisions of Regulation 1802(d)(1) only apply to use tax transactions and most transactions where the property is shipped from one place in California to another place in California are subject to sales tax.

Limitations of Bradley-Burns. If the Board does not specifically limit the retroactive effect of a regulatory action, it is retroactive to the applicable statute of limitations, usually three years. However, the Bradley-Burns Uniform Local Sales and Use Tax Law provides that redistribution of tax, penalty and interest distributed to a county or city other than the county or city entitled thereto, shall not be made earlier than two quarterly periods prior to the quarterly period in which the Board obtains knowledge of improper distribution. Thus, even under a retroactive application, redistribution can only be made up to two quarterly periods prior to the quarterly period in which the Board obtains knowledge of improper distribution. However, jurisdictions that have a pending appeal may have a date of knowledge going back several years.

Additional workload for the Local Revenue Allocation Unit (LRAU) and the Allocation Group. The LRAU is responsible for the initial allocation and distribution of all local taxes including those reported on sales and use tax returns, determined from audit findings, and included in accounts receivable. As part of its duties, LRAU analyzes the local tax schedules submitted with returns. The unit routinely reviews transactions reported on Schedule B of over \$5,000 (which would include transactions of over \$500,000) allocated through countywide pools. Depending on the business type, the LRAU may investigate whether the taxpayer should be contacted to see if direct allocation is required. Currently, once LRAU determines that the order for the property was not placed directly with the retailer out of state or that the property was not sent directly to the purchaser from out of state, investigation of the transaction stops and the use tax is allocated through the countywide pool. Under the proposed changes, staff will continue investigating these transactions to verify that the local use tax is correctly distributed.

To estimate the additional workload associated with the proposed revisions, the LRAU examined transactions in the 4th Quarter 2006, and found that the investigation of 214 accounts was discontinued because either the order was not placed directly with the retailer out of state, or because the order was not shipped directly to the customer from outside California. Further investigation of these transactions would include reviewing the account, contacting the taxpayer by phone/letter, processing and reviewing amended returns (if any), and notifying the affected jurisdictions in case of reallocation.

MSLLC points out that with the elimination of the direct/indirect problem, the issues relating to such transactions will be reduced, not increased. Staff agrees that with fewer requirements to verify, the investigation time of many transactions will be reduced. However, staff will still have to investigate to verify that the transactions meet the \$500,000 threshold and are use tax transactions. In addition, before requiring that local tax be allocated directly, staff must also determine that the retailer is required to report use tax and is not voluntarily registered to collect California use tax as provided in Regulation 1684(c). The remaining steps, processing and reviewing amended returns and notifying the affected jurisdictions in the case of reallocation, will also still have to be performed.

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With respect to investigating inquiries from jurisdictions, the Board's Allocation Group is responsible for processing written inquiries from local jurisdictions and/or their representatives regarding questionable or disputed local tax allocations. The Allocation Group estimates 360 additional inquiries per year could be filed under the proposed revisions. Again, although staff will have fewer factors to verify, more transactions will qualify for direct allocation and require investigation. Processing inquiries includes acknowledging and assigning inquiries, reviewing the file, contacting the taxpayer by phone/letter, making the adjustment, and preparing a response to the inquiring jurisdiction and their consultant.

Staff agrees with MSLLC's assertion that most inquiries will be resolved at the Allocation Group level, although it is reasonable to assume that some cases would continue with the appeals process. The costs noted on pages 7 and 9 regarding processing inquiries from jurisdictions are for the Allocation Group staff time, but not higher levels of appeal or review.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends revising subdivision (d)(1) operative January 1, 2008, to remove the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California. Staff further recommends amending the subdivision to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more.

Although staff and interested parties agree on the nature of the revisions, staff recommends the revisions apply prospectively. Staff believes that regardless of what was intended when the subdivision was first adopted, the plain language of the current subdivision imposes requirements that have been consistently applied by Board staff and would be eliminated under the proposed revision. Such a change is more than a clarification of current procedures and should be treated prospectively. Even with the limitations of Bradley-Burns, a retroactive application would adversely impact cities and counties because pool revenues they have already received and spent could be redistributed to another city.

As HdL states in its submission, "...revisions and clarifications should be requested and pursued in a timely fashion (not a decade after the fact), and should be applied prospectively. To do otherwise is simply unfair to all of the participants in the process (local governments, taxpayers, and Board staff) who have made a good faith effort to comply with the Board's regulations as written, and have refrained from submitting or pursuing inquiries based on speculation as to their true meaning or intent."

Staff notes that cases under appeal receive the greatest benefit from retroactivity because the date of knowledge would go back to the date the inquiry was received. However, for cities and counties who did not file inquiries for transactions that fell outside the existing regulation's criteria; or perhaps who submitted an inquiry, but did not appeal Board staff's denial, redistribution would be limited to transactions in which the Board was notified during the current quarter and the two preceding quarters. In other words, Bradley-Burns limitations are such that cases currently in the appeal process receive a greater benefit from a retroactive regulation change than those that followed the current

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provisions of the regulation. At this time, LRAU estimates that 11 appeal cases⁴ would be affected by the proposed revisions. An analysis of how a retroactive application would affect those cases is attached as Exhibit 4.

B. Pros of Alternative 1

- Makes the regulation consistent with the Board's decision in the City of Sacramento case.
- Incorporates into the regulation the Board's current policy that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more if they wish.
- Allows more transactions to qualify for direct allocation of local use tax resulting in increased revenues to jurisdictions with qualifying transactions.
- A prospective application ensures that jurisdictions benefit from a consistent interpretation of Board rules and can help them plan future revenue generating activities without a reduction of their previously received and spent revenues.

C. Cons of Alternative 1

- Does not incorporate the suggestion of some interested parties that the proposed revisions should apply retroactively.
- Will result in future revenue loss to participants in the countywide pool when the local tax is allocated directly to the jurisdiction of first functional use.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require the amendment of Regulation 1802.

E. Operational Impact of Alternative 1

The LRAU estimates 214 cases a quarter will require additional work as a result of the proposed revisions. The Allocation Group estimates an additional 360 inquiries per fiscal year could be filed under the proposed revisions.

Staff would notify taxpayers of the amendments to Regulation 1802 through an article in the Tax Information Bulletin (TIB). Manuals, returns, staff training materials, and pamphlets may also need revision.

F. Administrative Impact of Alternative 1**1. Cost Impact**

- The LRAU will need two Associate Tax Auditor positions to complete these additional investigations. Estimated costs for these positions are \$214,000 for the first year (including equipment) and \$194,000 for subsequent years. If, through a future Budget Change Proposal,

⁴ In the Second Discussion Paper, staff estimated 50 cases would be affected by the proposed revisions. However, after close review, staff discovered that a number of the cases simply involved 1802(d)(1) issues and would not necessarily be affected by the proposed changes.

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these costs are approved by the Board, the costs would be passed on to the local jurisdictions as costs for administering the local tax.

- The Allocation Group estimates that one Associate Tax Auditor position would be needed to review cases, contact taxpayers, and process the adjustments. The estimated cost for this position is \$107,000 for the first year (including equipment) and \$97,000 for subsequent years. If, through a future Budget Change Proposal, these costs are approved by the Board, the costs would be passed on to the local jurisdictions as costs for administering the local tax.
- The workload associated with publishing the regulation and TIB article and revising manuals, returns, training materials and pamphlets is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Beginning January 1, 2008, out-of-state retailers who are required to report California use tax will have to determine the place of first functional use on their non-lease transactions of \$500,000 or more even when the order is placed with a broker or in-state representative. These out-of-state retailers will also have to determine the place of first functional use on these use tax transactions even when the property is not shipped directly to the purchaser from an out-of-state location.

To comply with the proposed revisions, out-of-state retailers may have to change their record-keeping processes to track the place of first functional use.

H. Critical Time Frames of Alternative 1

Staff proposes an operative date of January 1, 2008, to allow adequate time to notify taxpayers and staff of the change. Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Alternative 2 – MSLLC Recommendation**A. Description of Alternative 2**

Like staff, MSLLC recommends removing from Regulation 1802(d)(1) the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California and clarifying that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more. However, MSLLC considers all of the proposed revisions to be clarifications of the original intent of the subdivision and believes the revisions should apply retroactively.

MSLLC contends that when the provisions of Regulation 1802(d)(1) were adopted in 1996, the intent was for them to apply to all Bradley-Burns Use Tax transactions that met the dollar threshold, whether or not the orders were placed directly or indirectly or whether or not the shipments were made directly or indirectly. In support of this position, MSLLC provided an affidavit from Mr. Robert Cendejas, the attorney representing the sponsors of the 1996 amendment - the California Manufacturers Association, the California Taxpayers Association and the California Chamber of

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Commerce - attesting to the sponsors' intent that the amendment apply to all use tax transactions, not simply to those involving direct orders and shipments.

MSLLC also notes that when the Sales and Use Tax Department announced the change in September 1996, the published Special Notice and Schedule F instructions did not condition application of the direct allocation provisions on "direct" order or shipping. In fact, the current provisions of the Schedule F instructions still do not include these conditions. MSLLC presumes this was because the Sales and Use Tax Department concluded that such distinction would have been un-administrable by staff and burdensome for taxpayers to carry out accurately.

To further support their position regarding the original intent of the subdivision, MSLLC provided an affidavit dated November 3, 2004, from former Board of Equalization employee, Mr. Glenn Bystrom, the Deputy Director of the Sales and Use Tax Department in 1996 when the provisions were implemented. Mr. Bystrom states that the conditions requiring direct placement of the order or direct shipment of the purchased goods would make compliance with the provision so difficult to be impractical for taxpayers. Mr. Bystrom further states that it was not the intent of either the sponsors or the Board Members who voted to adopt the provisions that it be interpreted in a manner to cause compliance difficulties.

MSLLC believes a retroactive application of the proposed revision reflects the original intent of the sponsors and Board Members and is supported by the Board's decision in the City of Sacramento case. MSLLC also points to an August 31, 2006, Decision and Recommendation issued by the Board's Appeals Division involving the City of Irvine, where staff allowed direct allocation of the local use tax even though the orders were negotiated in California. Finally, MSLLC notes that in the City of Anaheim case, staff acknowledged that it was likely that the regulation was intended to apply to all use tax transactions of \$500,000 or more, not just those when the property was shipped directly to the purchaser from outside this state.

The LRAU estimates 11 appeal cases would be affected by the proposed revisions. See Exhibit 4 for the impact on jurisdictions of a retroactive application of the proposed revisions.

B. Pros of Alternative 2

- Makes the regulation consistent with the Board's decision in the City of Sacramento case.
- Incorporates into the regulation the Board's current policy that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more if they wish.
- Allows more transactions to qualify for direct allocation of local use tax resulting in increased revenues to jurisdictions with qualifying transactions.
- MSLLC believes a retroactive application makes the regulation consistent with the original intent of the direct allocation provisions.

C. Cons of Alternative 2

- Applying the proposed amendments retroactively to outstanding appeal cases that relate to this issue could be perceived as giving preference to those cities that previously filed inquiries requesting an interpretation differing from staff's consistent application of existing regulation.

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- Applying the proposed amendments retroactively to outstanding appeals will result in revenue losses to jurisdictions that already received and spent tax revenues allocated to them through the countywide pool in the past.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, the recommendation does require amendment of Regulation 1802.

E. Operational Impact of Alternative 2

The LRAU estimates 214 cases a quarter will require additional work as a result of the proposed revisions. The Allocation Group estimates an additional 360 inquiries per fiscal year could be filed under the proposed revisions. MSLLC, however, believes the proposed revisions will decrease rather than increase staff workload as staff will have fewer requirements to verify under the simplified provisions.

Staff would notify taxpayers of the amendments to Regulation 1802 through an article in the Tax Information Bulletin (TIB). Manuals, returns, staff training materials, and pamphlets may also need revision.

F. Administrative Impact of Alternative 2**1. Cost Impact**

- The LRAU will need two Associate Tax Auditor positions to complete these additional investigations. Estimated costs for these positions are \$214,000 for the first year (including equipment) and \$194,000 for subsequent years. If, through a future Budget Change Proposal, these costs are approved by the Board, the costs would be passed on to the local jurisdictions as costs for administering the local tax.
- The Allocation Group estimates that one Associate Tax Auditor position would be needed to review cases, contact taxpayers, and process the adjustments. The estimated cost for this position is \$107,000 for the first year (including equipment) and \$97,000 for subsequent years. If, through a future Budget Change Proposal, these costs are approved by the Board, the costs would be passed on to the local jurisdictions as costs for administering the local tax.
- The workload associated with publishing the regulation and TIB article and revising manuals, returns, training materials and pamphlets is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.
- The Allocation Group estimates the costs associated with working the cases currently under appeal would be absorbable.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

- Out-of-state retailers who are required to report California use tax will have to determine the place of first functional use on their non-lease transactions of \$500,000 or more even when the order is placed with a broker or in-state representative. These out-of-state retailers will also have

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to determine the place of first functional use on these use tax transactions even when the property is not shipped directly to the purchaser from an out-of-state location.

To comply with the proposed revisions, out-of-state retailers may have to change their record-keeping processes to track the place of first functional use.

- Jurisdictions may file inquiries for transactions that qualify for direct allocation under the proposed revisions and are still within the Bradley-Burns time limitations.

H. Critical Time Frames of Alternative 2

None. The amended regulation would become effective 30 days after approval by the Office of Administrative Law.

Preparer/Reviewer Information

Prepared by: Tax Policy Division

Current as of: May 15, 2007

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed revisions to Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, regarding the direct allocation of the use tax to the jurisdiction of use

Alternatives

Alternative 1 - Staff Recommendation

As supported by The HdL Companies (HdL), the League of California Cities, the City of San Marcos, the City of Paso Robles, and the City of Glendale, staff recommends revising subdivision (d)(1) operative January 1, 2008, to remove the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California. Staff further recommends amending the subdivision to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more.

Alternative 2 – MSLLC Recommendation

As supported by the City of Los Angeles and Mr. Robert Cendejas, representing the City of Ontario, Mr. Albin Koch, MuniServices, LLC (MSLLC) recommends removing from Regulation 1802(d)(1) the requirements that the order for the property be sent by the purchaser directly to the retailer at an out-of-state location, and that the property be shipped directly to the purchaser from outside California. MSLLC also recommends amending the subdivision to clarify that retailers who voluntarily register to collect California use tax may report local use tax directly on non-lease transactions of \$500,000 or more. MSLLC's proposal is similar to staff's recommendation, except that it considers the proposed revisions to be clarifications of the original intent of the subdivision and applies the revisions retroactively.

Revenue Estimate

Background, Methodology, and Assumptions

Alternative 1:

There is nothing in the proposed amendment subdivision to Regulation 1802 that would either increase or decrease revenues because the proposals define rules for the allocation of existing local sales and use tax receipts. There would, however, be a shift of revenues between local jurisdictions.

Alternative 2:

There is nothing in the proposed amendment subdivision to Regulation 1802 that would either increase or decrease revenues because the proposals define rules for the allocation of existing local sales and use tax receipts. There would, however, be a shift of revenues between local jurisdictions.

Revenue Summary

Alternative 1 will not impact total revenues, but will result in a shift of revenues between local jurisdictions.

Alternative 2 will not impact total revenues, but will result in a shift of revenues between local jurisdictions.

Preparation

This revenue estimate was prepared by David E. Hayes, Jr., Research and Statistics Section, Legislative and Research Division. This revenue estimate was reviewed by Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department. For additional information, please contact Mr. Hayes at (916) 445-0840.

Current as of May 9, 2007

Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAXES.

Reference: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7203, 7203.1, 7204.03 and 7205, Revenue and Taxation Code.

(a) IN GENERAL.

(1) **RETAILERS HAVING ONE PLACE OF BUSINESS.** For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal 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.

(2) **RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.**

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) **PLACE OF PASSAGE OF TITLE IMMATERIAL.** If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

(b) PLACE OF SALE IN SPECIFIC INSTANCES.

(1) **VENDING MACHINE OPERATORS.** The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) **ITINERANT MERCHANTS.** The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) **RETAILERS UNDER SECTION 6015.** Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one in-state place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

(4) **AUCTIONEERS.** The place of sale by an auctioneer is the place at which the auction is held. Operative July 1, 1996, auctioneers shall report local sales tax revenue to the participating jurisdiction (as defined in subdivision (d) below) in which the sales take place, with respect to auction events which result in taxable sales in an aggregate amount of \$500,000 or more.

(5) **FACTORY-BUILT SCHOOL BUILDINGS.** The place of sale or purchase of a factory-built school building (relocatable classroom) as defined in paragraph (c)(4)(B) of Regulation 1521 (18 CCR 1521), Construction Contractors, is the place of business of the retailer of the factory-built school building regardless of whether sale of the building includes installation or whether the building is placed upon a permanent foundation.

(6) **JET FUEL.**

(A) For sales of jet fuel prior to January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

1. The principal negotiations for the sale are conducted at the retailer's place of business in this state;
and

2. The retailer has more than one place of business in the state.

(B) For sales of jet fuel on or after January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft.

(C) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(D) Multi-Jurisdictional Airports. For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. Through June 30, 2004, the local tax rate is imposed at 1.25% by Revenue and Taxation Code section 7202 (a). Operative July 1, 2004, the local tax rate is imposed at 1% by Revenue and Taxation Code section 7203.1 The local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), or operative July 1, 2004, imposed by counties under Revenue and Taxation Code section 7203.1(a)(1), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), or operative July 1, 2004, the remaining 0.75%, imposed by counties under Revenue and Taxation Code section 7203.1(a)(2), and in the case of the local sales tax imposed by cities at a rate of up to 1%, or operative July 1, 2004, at a rate of up to 0.75% under Revenue and Taxation Code section 7203.1(a)(2), and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in subdivisions 1. and 2., the following special rules apply:

a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is San Francisco International Airport, the Board shall transmit one-half of the local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(E) Otherwise, as provided elsewhere in this regulation.

(c) TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA

(1) If an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(2) If a retailer has a permanent place of business in this state in addition to its stocks of tangible personal property, the place of sale, in cases where the sale is negotiated out of state and there is no participation by the retailer's permanent place of business in this state, is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to the city, county, or city and county from which delivery or shipment is made.

(d) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

(1) APPLICATION OF USE TAX GENERALLY-DIRECT REPORTING BY RETAILERS. For transactions prior to December 31, 2007, (1) —When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made. Operative July 1, 1996, for transactions of \$500,000 or more, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), the seller shall report the local use tax revenues derived therefrom directly to such participating jurisdiction.

Operative January 1, 2008, for transactions of \$500,000 or more, if the seller is required to collect the local use tax on the transaction, except with respect to persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684), then the seller shall report the local use tax revenues derived therefrom directly to the participating jurisdiction where the first functional use is made.

Persons who voluntarily collect use tax under Regulation 1684(c) may, solely at their own discretion, report the local use tax revenues on transactions of \$500,000 or more directly to the participating jurisdiction where first functional use is made.

(2) DIRECT REPORTING BY PURCHASERS (2) —Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) ~~and paragraph (d)~~ shall apply prospectively only to transactions entered into on or after July 1, 1996. Paragraph (d) shall not apply to lease transactions.

Regulation 1802. PLACE OF SALE AND USE FOR PURPOSES OF BRADLEY-BURNS UNIFORM LOCAL SALES AND USE TAXES.

Reference: Sections 6012.6, 6015, 6359, 6359.45, 7202, 7203, 7203.1, 7204.03 and 7205, Revenue and Taxation Code.

(a) IN GENERAL.

(1) **RETAILERS HAVING ONE PLACE OF BUSINESS.** For the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales of that retailer in which that place of business participates occur at that place of business unless the tangible personal 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.

(2) **RETAILERS HAVING MORE THAN ONE PLACE OF BUSINESS.**

(A) If a retailer has more than one place of business in this state but only one place of business participates in the sale, the sale occurs at that place of business.

(B) If a retailer has more than one place of business in this state which participate in the sale, the sale occurs at the place of business where the principal negotiations are carried on. If this place is the place where the order is taken, it is immaterial that the order must be forwarded elsewhere for acceptance, approval of credit, shipment, or billing. For the purposes of this regulation, an employee's activities will be attributed to the place of business out of which he or she works.

(3) **PLACE OF PASSAGE OF TITLE IMMATERIAL.** If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser at a place outside of the local taxing jurisdiction in which the retailer's place of business is located, or that the property sold is never within the local taxing jurisdiction in which the retailer's place of business is located.

(b) PLACE OF SALE IN SPECIFIC INSTANCES.

(1) **VENDING MACHINE OPERATORS.** The place of sale is the place at which the vending machine is located. If an operator purchases property under a resale certificate or from an out-of-state seller without payment of tax and the operator is the consumer of the property, for purposes of the use tax, the use occurs at the place where the vending machine is located.

(2) **ITINERANT MERCHANTS.** The place of sale with respect to sales made by sellers who have no permanent place of business and who sell from door to door for their own account shall be deemed to be in the county in which is located the seller's permanent address as shown on the seller's permit issued to him or her. If this address is in a county imposing sales and use taxes, sales tax applies with respect to all sales unless otherwise exempt. If this address is not in a county imposing sales and use taxes, he or she must collect the use tax with respect to property sold and delivered or shipped to customers located in a county imposing sales and use taxes.

(3) **RETAILERS UNDER SECTION 6015.** Persons regarded by the Board as retailers under Section 6015(b) of the Revenue and Taxation Code are regarded as selling tangible personal property through salespersons, representatives, peddlers, canvassers or agents who operate under or obtain the property from them. The place of sale shall be deemed to be:

(A) the business location of the retailer if the retailer has only one place of business in this state, exclusive of any door-to-door solicitations of orders, or

(B) the business location of the retailer where the principal negotiations are carried on, exclusive of any door-to-door solicitations of orders, if more than one in-state place of business of the retailer participates in the sale.

The amendments to paragraph (b)(3) apply only to transactions entered into on or after July 1, 1990.

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(6) **JET FUEL.**

(A) For sales of jet fuel prior to January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft, if both of the following conditions are met:

1. The principal negotiations for the sale are conducted at the retailer's place of business in this state; and

2. The retailer has more than one place of business in the state.

(B) For sales of jet fuel on or after January 1, 2008, the place of sale or purchase of jet fuel is the city, county, or city and county which is the point of the delivery of the jet fuel to the aircraft.

(C) The local sales or use tax revenue derived from the sale or purchase of jet fuel under the conditions set forth in this subdivision shall be transmitted by the Board, to the city, county, or city and county where the airport is located at which such delivery occurs.

(D) Multi-Jurisdictional Airports. For the purposes of this regulation, the term "multi-jurisdictional airport" means and includes an airport that is owned or operated by a city, county, or city and county, that has enacted a state-administered local sales and use tax ordinance and as to which the owning or operating city, county, or city and county is different from the city, county, or city and county in which the airport is located. Through June 30, 2004, the local tax rate is imposed at 1.25% by Revenue and Taxation Code section 7202 (a). Operative July 1, 2004, the local tax rate is imposed at 1% by Revenue and Taxation Code section 7203.1 The local tax revenue derived from sales of jet fuel at a "multi-jurisdictional airport" shall, notwithstanding subdivision (B), be transmitted by the Board as follows:

1. In the case of the 0.25% local sales tax imposed by counties under Government Code section 29530 and Revenue and Taxation Code section 7202(a), or operative July 1, 2004, imposed by counties under Revenue and Taxation Code section 7203.1(a)(1), half of the revenue to the county which owns or operates the airport (or in which the city which owns or operates the airport is located) and half to the county in which the airport is located.

2. In the case of the remaining 1% of the local sales tax imposed by counties under Revenue and Taxation Code section 7202(a), or operative July 1, 2004, the remaining 0.75%, imposed by counties under Revenue and Taxation Code section 7203.1(a)(2), and in the case of the local sales tax imposed by cities at a rate of up to 1%, or operative July 1, 2004, at a rate of up to 0.75% under Revenue and Taxation Code section 7203.1(a)(2), and offset against the local sales tax of the county in which the city is located under Revenue and Taxation Code section 7202(h), half of the revenue to the city which owns or operates the airport and half to the city in which the airport is located. If the airport is either owned or operated by a county or is located in the unincorporated area of a county, or is owned or operated by a county and is located in the unincorporated area of a different county, the local sales tax revenue which would have been transmitted to a city under this subdivision shall be transmitted to the corresponding county.

3. Notwithstanding the rules specified in subdivisions 1. and 2., the following special rules apply:

a. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is San Francisco International Airport, the Board shall transmit one-half of the local sales tax revenues derived from such sales to the City and County of San Francisco, and the other half to the County of San Mateo.

b. In the case of retail sales of jet fuel in which the point of the delivery of the jet fuel to the aircraft and place of sale or purchase, as described in subdivision (A) or (B), is Ontario International Airport, the Board shall transmit local sales taxes with respect to those sales in accordance with both of the following:

c. All of the revenues that are derived from a local sales tax imposed by the City of Ontario shall be transmitted to that city.

d. All of the revenues that are derived from a local sales tax imposed by the County of San Bernardino shall be allocated to that county.

(E) Otherwise, as provided elsewhere in this regulation.

(c) TRANSACTIONS NEGOTIATED OUT OF STATE AND DELIVERED FROM THE RETAILER'S STOCK OF TANGIBLE PERSONAL PROPERTY IN CALIFORNIA

(1) If an out-of-state retailer does not have a permanent place of business in this state other than a stock of tangible personal property, the place of sale is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to that city, county, or city and county.

(2) If a retailer has a permanent place of business in this state in addition to its stocks of tangible personal property, the place of sale, in cases where the sale is negotiated out of state and there is no participation by the retailer's permanent place of business in this state, is the city, county, or city and county from which delivery or shipment is made. Local tax collected by the Board for such sales will be distributed to the city, county, or city and county from which delivery or shipment is made.

(d) ALLOCATION OF SALES TAX AND APPLICATION OF USE TAX.

Local sales tax is allocated to the place where the sale is deemed to take place under the above rules. The local use tax ordinance of the jurisdiction where the property at issue is put to its first functional use applies to such use. As used in this subdivision, the term "participating jurisdiction" means any city, city and county, or county which has entered into a contract with the Board for administration of that entity's local sales and use tax.

APPLICATION OF USE TAX GENERALLY. (1) ~~When the order for the property is sent by the purchaser directly to the retailer at an out-of-state location and the property is shipped directly to the purchaser in this state from a point outside this state, the transaction is subject to the local use tax ordinance of the participating jurisdiction where the first functional use is made.~~ Operative July 1, 1996, for transactions of \$500,000 or more, ~~except with respect to~~ persons who register with the Board to collect use tax under Regulation 1684(c) (18 CCR 1684) may, and other the sellers shall, report the local use tax revenues derived therefrom directly to such the participating jurisdiction where the first functional use of the property is made.

(2) Operative July 1, 1996, if a person who is required to report and pay use tax directly to the Board makes a purchase in the amount of \$500,000 or more, that person shall report the local use tax revenues derived therefrom to the participating jurisdiction in which the first functional use of the property is made.

The amendments to paragraph (b)(4) and paragraph (d) shall apply prospectively only to transactions entered into on or after July 1, 1996. Paragraph (d) shall not apply to lease transactions.

**Estimated Retroactive Impact of Proposed Revisions to Regulation 1802(d)(1)
 Reallocation of Countywide Pool Amounts**

		Direct Allocation	Reduction to Pool	Jurisdiction's Loss of Pool Revenue	Net Adjustment to Jurisdiction
1	Hayward	\$ 42,853		(\$ 5,180)	\$ 37,673
2	Alameda County Pool		(42,853)		
3	Fresno	114,229		(73,810)	40,419
4	Fresno County Pool		(114,229)		
5	Santa Fe Springs	64,950		(3,963)	60,987
6	Los Angeles	46,909		(68,741)	(21,832)
7	Pasadena	62,900		(5,596)	57,304
8	Los Angeles County UA	39,692		(8,313)	31,379
9	Los Angeles County Pool		(214,451)		
10	Anaheim	118,349		(13,250)	105,099
11	Fullerton	5,944		(4,045)	1,899
12	Orange County Pool		(124,293)		
13	Ontario	7,898		(10,510)	(2,612)
14	San Bernardino	44,447		(6,875)	37,572
15	San Bernardino Pool		(52,345)		
16	Chula Vista	37,962		(7,806)	30,156
17	San Diego	115,651		(71,476)	44,175
18	San Diego County Pool		(153,613)		
19	Stockton	7,060		(3,105)	3,955
20	San Joaquin County Pool		(7,060)		
21	South San Francisco	5,215		(509)	4,706
22	San Mateo County Pool		(5,215)		
23	Santa Clara	33,775		(5,837)	27,938
24	San Jose	129,792		(73,460)	56,332
25	Santa Clara County Pool		(163,567)		
26	Petaluma	6,247		(931)	5,316
27	Sonoma County Pool		(6,247)		
28	Tulare	6,010		(940)	5,070
29	Tulare County Pool		(6,010)		
30	West Sacramento	326,041		(127,528)	198,513
31	Yolo County Pool		(326,041)		
Total Reallocation		\$1,215,924	(\$1,215,924)		
Total Net Gain to Jurisdictions					\$724,050

Notes:

Direct allocation to a jurisdiction results in the jurisdiction losing the amount they would have received from their percentage of the county pool. A jurisdiction has a negative net adjustment when their direct allocation is less than the amount of pool revenue lost.

The table shows the net adjustment to jurisdictions receiving a direct allocation of local use tax as a result of retroactively applying the proposed regulatory revisions. Losses of pool revenue to other jurisdictions (those that do not receive direct allocation) are not shown.

The above reallocation includes amounts related to the City of Anaheim case. However, whether the contracts in the City of Anaheim should be considered as meeting the \$500,000 threshold is an unresolved issue in the appeal.



April 6, 2007

Mr. Geoffrey E. Lyle
Section Supervisor,
Business Taxes Committee Section
State Board of Equalization
450 N St., MIC: 50
Sacramento, CA 95814

Re: Interested Party Proceeding – Regulation 1802 (d) (Situs Allocation for “Indirect” Use Tax Transactions of \$ 500,000 or More.)

Dear Mr. Lyle:

This letter responds to Board Staff’s Second Discussion Paper issued March 13, 2007, and the Second Interested Party meeting on this subject that occurred March 22. The eleven Appealing Cities in Appeal of City of Anaheim et al., Case ID: 254561 filed an Interested Party letter dated January 2, 2007 requesting clarification of Regulation 1802 (d) (1) (recently renumbered from 1802 (c) (1)), as adopted in 1996 to require situs allocation of use tax revenues from purchases of \$500,000 or more of tangible personal property not negotiated in California whose first use occurs in the State. Another letter on the same subject was filed on February 20, 2007 after the February 8 interested party meeting. Board Staff contended in City of Anaheim and subsequently in this proceeding that this rule does not apply if either the purchase or the delivery occurred indirectly through an agent of the retailer, while the appealing cities argue that the situs rule was intended to apply to all use tax transactions meeting the amount threshold, not just those transacted directly with an out-of-state seller.

Introduction

Appeal of City of Anaheim et al. concerned a sale negotiated directly with the out-of-state seller that was consummated indirectly by deliveries made by an in-state agent. In an earlier hearing, Appeal of City of Sacramento Case ID: 255567, there was a similar disagreement over whether a sale resulting from an order placed indirectly through an agent of the seller qualified for situs allocation under Regulation 1802 (c) (1). Situs allocation in that appeal was granted by unanimous vote of the Board Members. (See the hearing transcript for Appeal of City of Sacramento, attached as Exhibit A to the MSLLC Interested Party letter dated January 2, 2007.)

MuniServices LLC (“MSLLC”) contends on behalf of its appealing client jurisdictions that Regulation 1802 (c) (1) was adopted by the Board Members in 1996 to apply to all Bradley-Burns use tax transactions that meet the dollar threshold, whether or not the orders were placed directly or indirectly and whether or not the shipments were made

directly or indirectly. The affidavit from the attorney representing the sponsors of the amendment in 1996, the California Manufacturers Association, the California Taxpayers Association and the California Chamber of Commerce, attests to their intent that the amendment apply to all use tax transactions, not simply to those involving direct orders and shipments. (See MSLLC Interested party letter dated January 2, 2007, Exhibit B.)

There are also strong policy reasons why indirect orders and shipments should be included in the scope of Regulation 1802 (c) (1) (recently renumbered as paragraph (d) (1).) As indicated in Exhibit B to our January 2, 2007 letter, the entire purpose of its adoption was to increase the situations in which Bradley-Burns revenues resulting from manufacturing or similar active business operations would be welcomed by host jurisdictions. Whether the use taxes incurred result from direct orders or shipments is irrelevant to that purpose. Matching local revenues with the infrastructure and service (security, police and fire) costs associated with their production stimulates industrial and commercial business activities and the creation of jobs and was the purpose for this change.

The proposed clarification will ease taxpayer understanding of and compliance with Regulation 1802 (d) (1). Requiring out-of-state tax reporting personnel to distinguish between transactions originated or consummated directly or indirectly in reporting their use taxes on transactions meeting the dollar threshold is usually impractical and often impossible. The retailer's tax department normally is out of state in these situations and not able to ascertain from available internal accounting information just how the orders were actually submitted and fulfilled. Nor is it likely that Board Audit Staff can detect errors by ascertaining ordering or shipping details for these transactions from available books and records of taxpayers or their agents and employees. Accounting records do not often reveal such information, and busy tax compliance professionals do not have time to do the type of rigorous investigation necessary to ascertain such details.

This problem was recognized by Board's Sales and Use Tax Department when it first implemented the predecessor to Regulation 1802 (d) (1) in August and September of 1996. The Special Notice, Schedule F and Instructions issued at or about that time, together with the accompanying questionnaire do not distinguish between direct orders and shipments and indirect orders and shipments in implementing the new situs reporting rule. (See Exhibits E-1 through E-3) None of these Board publications refer to any supposed requirement that the orders be placed or fulfilled directly.

Presumably this was because the Sales and Use Tax Department concluded that such a distinction would have been un-administrable by Board Staff and very burdensome for taxpayers to carry out accurately. Attached as Exhibit A to this Interested Party Letter is an affidavit dated November 3, 2004 from Glenn Bystrom, the Deputy Director of the State Board of Equalization, Sales Tax, at the time Regulation 1802 (c) (recently re-lettered as subdivision (d)) was implemented. In pertinent part it reads as follows:

"This interpretation was based on the purposes expressed by the industry and public jurisdictions representatives that sponsored and participated in the

development of Regulation 1802 (c) as well as its language. For example the heading preceding 1802 (c) (1) reads application of Use Tax Generally. That heading is consistent with the Department's contemporaneous understanding of the intent behind the adoption of subdivisions 1802 (c) (1) and (c) (2).

"If additional conditions requiring 'direct' placement of the order or 'direct' shipment of the purchased goods were imposed on transactions otherwise subject to 1802 (c) (1) , it is my opinion that they would likely make compliance with the provision so difficult as to be impractical for both large and small taxpayers. It was not the intent of either the sponsors or the Board Members who voted to adopt Regulation 1802 (c) that it be interpreted in a manner to cause it to be impractical to comply with."

Accordingly, MSLLC respectfully repeats its request that the Board Staff propose an amendment to Regulation 1802 (d) (1) (formerly (c) (1)) that clarifies its language to reflect the sponsors,' Members' and Board Staff administrators' original determination that situs allocation would apply to all transactions subject to Bradley-Burns use tax that meet the size threshold and do not constitute "leases." (Leases were excluded specifically from the regulation at the request of the leasing industry. Also excluded were transactions involving out-of-state retailers not regarded as doing business in California who registered voluntarily to collect and remit use taxes. Presumably, the latter exclusion was intended to avoid discouraging such retailers from registering.) (See Regulation 1802 (d).)

As discussed at the February 8, 2007 Interested Party meeting on this topic, MSLLC's suggestion for clarifying Regulation 1802 (d) (1) is attached as Exhibit B.

In addition to clarifying the direct/indirect problem of subdivision (d) (1) the draft - attached as Exhibit C also addresses the question of whether taxpayers that have volunteered to register to collect use tax may also volunteer to report it by situs if the \$500,000 threshold has been met. The present literal text of Regulation 1802 (d) (1) specifically excludes voluntary registrants from being *required* to report such transactions directly.

Notwithstanding, the current instructions to Schedule F attached as Exhibit E-3 and the similar instructions attached as Exhibit A-6 to our Interested Party Letter dated February 20, 2007 permit such reporting, although they do not require it if the taxpayer has registered voluntarily under Regulation 1684 to collect use tax. Consistently, the draft clarification attached as Exhibit B to this letter proposes that this permissive rule be reflected in the clarified regulation, and MSLLC understands this proposal not to be objectionable to Board Staff.

The Original Regulatory Intent

The Second Discussion Paper notes (at page 3 of 7) that the Appeals Division agreed at the oral hearing of the City of Anaheim inquiries "that it was likely that the regulation was intended to apply to all use tax transactions of \$ 500,000 or more, not just those when the property was shipped directly to the purchaser from outside this state." The transcript of the Public Hearing at which this addition to Regulation 1802 was adopted by Board Members confirms this conclusion. (See Exhibit C attached.)

That transcript is long and very technical, because there were many problems in the Public Notice draft that had to be addressed, some for the first time, during the public hearing. The intent to apply the changes in Regulation 1802 to all use tax transactions was discussed by its sponsors, particular Mr. Robert Cendejas who represented the California Manufacturers Association, the California Chamber of Commerce, and Cal-Tax on the changes, and no dissent was expressed either by Board Staff or the Members regarding that intent.

Five substantive but related amendments to the regulation were adopted by the Members at the hearing for consideration on the 15-day file. Despite the lengthy discussions that occurred while these amendments were being discussed, there is no mention whatsoever that the change reflected in what finally became subdivision 1802 (c) (1) was to be distinguished from that in subdivision 1802 (c) (2), both of which require situs reporting for use tax purchases of \$ 500,000 or more. (Once again, subdivision 1802 (c) was recently renumbered as subdivision (d).)

The transcript shows, at pp 5-6, that the language regarding direct shipment was included in subdivision 1802 (c) (1) to make it clear that only use tax and not sales tax could apply to the transactions described in it. Without that addition, sales tax could have applied if fulfillment was from an in-state inventory. (Compare Exhibits D-1 and D-2) There was never any discussion at the hearing that this change was made to establish direct shipping as a condition to application of the situs allocation rule for use tax transactions of \$ 500,000 or more.

Clarification Will Reflect the Original Intent

MSLLC's contention is not that subdivision 1802 (d) 1) is invalid but that the minority interpretation of how it is to be applied should be overruled by clarifying its language so that it is consistent with its official contemporary and later administrative interpretations. One of the most important of these is the contemporaneous meaning placed on the provision by the Sales and Use Tax Department when it first announced the change in the Special Notice of September, 1996 and published Schedule F and its instructions. Neither of them condition application of either (c) (1) or (c) (2) on "direct" ordering or shipping, even though language to that effect does appear in (c) (1). Therefore, the Sales and Use Tax Department implemented the situs allocation changes without requiring "direct"

ordering or shipping for transactions of \$ 500,000 or more under either subdivision (c) (1) or (c) (2).

Thus, the official Board interpretation of the provisions that were forwarded to taxpayers, and still is contained in the Schedule F instructions, interpreted both subdivisions (c) (1) and (c) (2) to apply to all use taxes, not just those on direct out-of-state transactions. This interpretation was consistent with the intent of the sponsors and the Board members reacting to their requests.

When the issue of whether an order had to be placed directly with the out-of-state retailer arose recently for a number of sizeable transactions over \$ 500,000, both the Sales and Use Tax Department's Allocation Group and the Appeals Division of Legal followed the Schedule F instructions and held that specific allocation to the location of first functional use applied, even though there was no dispute that the orders had not been placed directly with the out-of-state seller. (See Decision and Recommendation issued to the City of Irvine dated August 31, 2006.) (Not attached but available to qualified parties upon request.)

A similar result was reached when an indirect order issue under subdivision 1802 (c) (1) arose in Appeal of City of Sacramento in 2004. In that case the Board held unanimously that the situs allocation rule applied to an order of fire-fighting equipment that had been taken indirectly by an independent sales agent of the retailer located in California. The revenues were reallocated from the Sacramento County pool directly to the City.

Thus, it appears from the history of this issue that the only party not in harmony with the simplified interpretation of present subdivision (d) (1) of Regulation 1802 that MSLLC seeks to reflect in the clarifying language is the Board's Local Revenue Allocation Unit ("LRAU"). According to the Second Discussion Paper, that unit apparently has been devoting resources to investigating direct ordering and shipping issues that the Members, as exemplified by the City of Sacramento result, the Sales and Use Tax Department as a whole, as exemplified by the September 1996 Special Notice and the Schedule F instructions, and the Allocation Group of the Sales and Use tax Department and the Appeals Division of the Legal Department, as exemplified by the Decision and Recommendation involving the City of Irvine dated August 31, 2006, do not believe to be either relevant or significant. Thus, the clarification sought should serve to redirect valuable administrative effort to more efficient use.

"Will-of-the Wisp" Additional Administrative Costs

MSLLC questions whether there would be additional work necessary in LRAU in addition to the 214 items that it investigated in 4Q06 to ascertain that the transactions were not "direct." With the elimination of the direct/indirect problem the issues relating to such transactions will be reduced, not increased. We also doubt seriously that 360 additional appeal cases would be filed after the clarifications became effective, and that the proposed simplification would not permit most inquiries of this nature to be resolved at the Allocation Group level rather than being forwarded through the Appeals Process.

In support of these serious doubts, MSLLC points out that only two of these appeals emerged in the last eleven years and that simplification of the regulation should tend to simplify rather than complicate the dispute resolution process.

Yours very truly

Albin C. Koch

Albin C. Koch
Special Tax Counsel
MuniServices LLC

CC: All Board Members and Staff
Randy Dryden
Janis Varney
Fran Mancina

Enclosures

- Exhibit A. Affidavit of former BOE Deputy Executive Director Glenn Bystrom dated November 3, 2004.
- Exhibit B. Proposed Clarified Regulation 1802 (d) (1).
- Exhibit C. Reporter's Transcript of April 23, 1996 hearing on Proposed Amendments to Regulation 1802.
- Exhibit D-1 2-22-96 Public Hearing Draft of Proposed Amendments to Regulation 1802.
- Exhibit D-2 1-26-96 Fifteen-Day File Draft of Proposed Amendments to Regulation 1802.
- Exhibit E-1 BOE Special Notice regarding Method for Allocating Local Use Tax on Certain Sales and Purchases
- Exhibit E-2 BOE Instructions For Schedule F and Schedule F (Rev.2 (3-97)
- Exhibit E-3 BOE Questionnaire for Out-of-State Retailers

RESOLUTION **INTERGOVERNMENTAL
RELATIONS** MAR 07 2007

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local state or federal governmental body must have been first adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, regulations (specifically Regulation 1802 (d) (1)) implementing the Bradley-Burns Uniform Sales and Use Tax , requires sellers to report local use tax revenues on transactions aggregating \$ 500,000 or more directly to the jurisdiction in which the first use is deemed to occur; and

WHEREAS, the sponsors of that Regulation in 1996 intended that it apply to use taxes incurred on sales of that size without regard to whether the orders and shipments were placed or made directly or indirectly by the parties, and there is no evidence in the record that the adopting Board Members intended otherwise; and

WHEREAS, that interpretation was reflected directly in the instructions and forms prepared contemporaneously to implement and administer that Regulation; and

WHEREAS, the Allocation Group of the State Board of Equalization ("Board") has disagreed claiming that only direct orders to, and shipments from, out-of-state sellers qualify for direct allocation; and

WHEREAS, the City of Los Angeles has contracted with MuniServices LLC ("MSLLC") to handle all issues relating to sales and uses taxes involving this City, and MSLLC has submitted correspondence and made appearances seeking clarification of this regulation; and

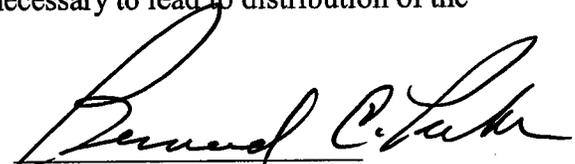
WHEREAS, as a result of MSLLC's efforts, the Members of the State Board of Equalization ("Board") have initiated formal proceedings to consider clarifying Regulation 1802 (d) (1) to reflect the original intention; and

WHEREAS, the City of Los Angeles has appealed its claim to the Board Members for direct distribution of approximately \$ 500,000 of local use taxes that were distributed by Board Staff through the county pool as a result of the first use of fuel in this City by a large truck rental company located here;

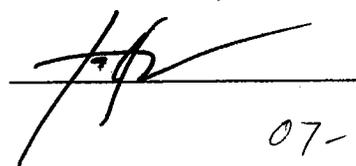
NOW THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2007-08 State Legislative Program SUPPORT of the efforts of MSLLC on its behalf to seek such clarifications in the Board's Bradley-Burns Regulations as may be necessary to lead to distribution of the funds in question to this City.

MAR 07 2007

Presented By:


BERNARD PARKS
Councilmember, 8th District

Seconded By:



07-0002-549

EL7



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April 6, 2007

Mr. Jeffrey McGuire
Tax Policy Manger, MIC: 92
Sales and Use Tax Department
PO Box 942879
Sacramento, CA 94729-0092

**RE: PROPOSED AMENDMENTS TO BOARD OF EQUALIZATION
REGULATIONS 1802 AND 1803**

Dear Mr. McGuire:

I write to inform you that the League of California Cities Revenue and Taxation Policy Committee (Committee) has taken a position on the proposed amendments to Regulations 1802 and 1803 as discussed in the second issue paper released by BOE staff. The Committee's unanimous recommendation has been placed on the League's Board of Directors consent calendar agenda for final action and adoption at the next Board meeting, which is scheduled for mid-May.

The League's Revenue and Taxation Committee supports the proposed amendments to Regulation 1802 and 1803 on a prospective basis. The Committee supported this approach as a way to implement the League's existing policy, which favors situs-based allocation as the appropriate method to match local revenues with the local impact.

However, the Committee did not take a position on application of the amendments to existing claims on a retroactive basis. During the Committee meeting, many questions arose as to what the financial impact of retroactivity would be on California cities and how to enact a reasonable reallocation method. The Committee felt that without this important information on the fiscal impact, no position on retroactivity could be taken.

The League requests that Board staff undertake an analysis showing the amount of money to be reallocated and the number of jurisdictions affected by these proposed amendments. We believe that this analysis should be shared with all interested parties for their feedback no later than a few weeks prior to the Business Taxes Meeting to be held on May 31, 2007, and certainly prior to any decision by the BOE on the issue of retroactivity.

Should you have any questions about the Committee's position, please feel free to contact me at (916) 658-8222.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Carrigg". The signature is fluid and cursive, with the first name "Dan" and last name "Carrigg" clearly distinguishable.

Daniel Carrigg
Legislative Director,
League of California Cities

cc: The Honorable Betty Yee, Chair, State Board of Equalization
The Honorable Judy Chu, Vice-Chair, State Board of Equalization
The Honorable Michelle Steel, Member, State Board of Equalization
The Honorable Bill Leonard, Member, State Board of Equalization
The Honorable John Chiang, State Controller, Ex-Officio Member, State Board of Equalization

Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

April 6, 2007

Mr. Jeffrey L. McGuire, Chief
Sales and Use Tax Department – Tax Policy Division
State Board of Equalization
450 N Street, MIC 92
Sacramento, CA 94279-0092

Dear Mr. McGuire:

The following are our comments relating to the current proposals to retroactively revise regulations 1802 and 1803.

Generally speaking we support direct situs allocation of local sales & use tax, particularly wherever a legitimate claim can be made that the local agency receiving the funds is the one providing the public services to the business. We therefore agree that the proposed changes to Regulation 1802(d) (1) are logical and sound.

However, we have serious reservations about the proposed re-interpretation of Regulation 1803, particularly in the current environment where sales tax sharing agreements are becoming the determining factor in where a “place of sale” is located. Further lowering the bar as to what constitutes a “place of sale” or in-state “participation” will only fuel growth in this practice, and in the burgeoning industry set up to solicit government bidding on tax kickbacks in exchange for allocation of sales and use tax revenues.

These agreements are rebating 50% or more of public tax dollars to the private sector, and often corrupt (rather than encourage) the relationship between tax allocation and service burden. The possibility of direct allocation of local tax on shipments from out of state is worthy of future review but only in context with potential solutions to the problems that it would exacerbate.

We disagree for the reasons stated below, that retroactive application of the proposed changes to either regulation would be sound or beneficial.

- **The burden on local government.** No one knows the true dollar impact of allowing the proposed changes to apply retroactively to the 1350 pending claims. However, it is agreed that it would result in the largest tax shift in the history of the Bradley Burns Local Sales & Use Tax program and that the vast majority of the cities and counties in the State would have to pay back monies that have long been spent. Not even agencies with pending claims can be assured that they would be net “winners” after all redistributions were completed. It is this very type of situation that R & T section 7209 was designed to prevent.

- **The burden on taxpayers.** Retroactivity would require that taxpayers who are subjects of the claims research business activities and amend quarterly sales tax returns and schedules going back twelve years or more. This is an unnecessary and unfair request of companies who made a good faith effort to comply with the Board's regulations and reporting guidelines that were being administered at the time.
- **The burden on Board of Equalization staff.** Proponents of retroactivity have acknowledged that a high percentage of the pending cases will ultimately go unresolved because some companies will have closed down, moved, been acquired, accounting records will have been destroyed, key tax department personnel will have long since retired or otherwise moved on, etc... This is a considerable waste of Board resources and staff time to ask that thorough investigations be done on a large inventory of cases, when it's acknowledged at the outset that a large number of these cases will ultimately be dead ends.

The retroactive claims that are finally tracked down will be subject to appeal by the losing jurisdictions which will take additional resources and time all of which adds to the administrative fees charged all local governments while detracting from the Board's primary goal of revenue collection.

When trying to decide the true intent of the Board Members (past or present), we should all agree upon a standard. This standard should be the Board's own written regulations which are usually adopted with input from taxpayers, local jurisdictions and their consultants. Revisions and clarifications are an important part of the process and the Board's willingness to continually re-evaluate and explore possible improvements are greatly appreciated.

However, revisions and clarifications should be requested *and pursued* in a timely fashion (not a decade after the fact), and should be applied prospectively. To do otherwise is simply unfair to all of the participants in this process (local governments, taxpayers, and Board staff) who have made a good faith effort to comply with the Board's regulations *as written*, and have refrained from submitting or pursuing inquiries based on speculation as to their true meaning or intent.

Sincerely,

Lloyd de Llamas

LdL:moh

cc: Ms. Lynn Whitaker
Ms. Lynda Cardwell
Mr. Bob Wils
Mr. Larry Micheli
Mr. Doug Boyd

City of Paso Robles:

From: Mike Compton [mailto:MCompton@prcity.com]

Sent: Thursday, April 12, 2007 8:56 AM

To: McGuire, Jeff

Subject: Regulation 1803

Dear McQuire,

The City of Paso Robles concurs with the position recently communicated to the Board by HdL Companies via their letter dated April 6, 2007 (copy attached). It clearly identifies the concerns and issues facing a majority of California cities and counties. The proposed changes, if considered outside of the full context of the entire sales tax remittance, collection and distribution system, would seem contrary to good public policy.

The City of Paso Robles would urge the board to consider the proposed changes in the framework as suggested by HdL Companies.

Respectfully,

Mike Compton

Director of Administrative Services/Treasurer

mcompton@prcity.com

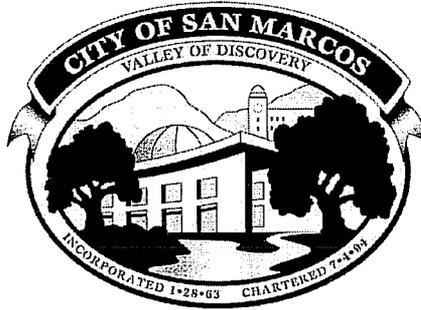
City of Paso Robles

1000 Spring Street

Paso Robles, CA 93446

805-237-3999

805-237-6565 FAX



1 Civic Center Drive
San Marcos, CA 92069-2918

Telephone
760.744.1050
FAX: 760.744.7543

April 12, 2007

Mr. Jeffrey McGuire, Chief
Tax Policy division (MIC: 92)
Board of Equalization 450 N. Street
P.O. Box 924879
Sacramento, CA 94279-0092

Re: Redistribution of Local Use Tax

Dear Mr. McGuire:

It is the City of San Marcos understanding that the Board of Equalization is currently evaluating a proposal to retroactively re-interpret its regulations on distribution of local taxes that involve shipment of merchandise from outside of California. If adopted, the change would potentially redistribute hundreds of millions of dollars and result in the concentration of "use tax" to a few cities and counties and create a hardship for the majority of cities and counties within the State.

Attached is a letter from the HdL Companies (HdL) dated April 6, 2007, relating to the current proposals to retroactively revise regulations 1802 and 1803. The City strongly agrees with HdL that the retroactive application of the proposed changes to either regulation would not be sound or beneficial for the reasons delineated in their letter.

The Board of Equalization's Business Taxes Committee is scheduled to review this issue on May 31, 2007. Please provide this letter to the Committee for their consideration.

Sincerely,

Liliane G. Serio, CPA
Finance Director

cc: Paul Malone, City Manager
Lloyd de Llamas, HdL Companies

CITY COUNCIL:

Jim Desmond, Mayor

Hal Martin, Vice-Mayor

Mike Preston

Chris Orlando

Rebecca Jones