

[Senate Bill 533](#) (Pan)

Date: 07/06/15

Program: Local Sales and Use Tax

Sponsor: City of West Sacramento

Government Code 53084.5

Effective: January 1, 2016

Michele Pielsticker (Chief) 916.322.2376

Debra Waltz (Analyst) 916.324.1890

Summary: Amends the prohibition on a local agency entering into an agreement that results in the payment, transfer, diversion, or rebate of any Bradley-Burns local tax revenues received by another local agency from a retailer that continues to maintain a physical presence within the jurisdiction of the local agency where the retailer was first located.

Summary of Amendments: Since the previous analysis, the bill was amended to clarify that the prohibition does not apply to any mutual tax revenue sharing agreement between local agencies where the agreement would not result in the payment, transfer, diversion, or rebate of those tax revenues to a retailer.

Purpose: To prohibit cities and counties from using Bradley-Burns sales tax rebates as an incentive to draw sales tax-generating activities away from other communities.

Fiscal Impact Summary: No impact to state revenue.

Existing Law: The Board of Equalization (BOE) administers the **Bradley-Burns Uniform Local Sales and Use Tax Law**¹ which authorizes counties to impose a local sales and use tax. This tax rate is fixed at 1%² of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use within the county.

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

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

Place of Sale – Allocation of Bradley-Burns Local Tax. RTC Section 7205 specifies the “place of sale” for purposes of the local sales tax as the place of business of the retailer. **If a retailer has only one place of business** in California, all California retail sales in which that place of business participates occur at that place of business. The BOE allocates the local sales tax to the city, county, or city and county in which that place of business is located, even if title to the property passes to the purchaser outside the jurisdiction in which the retailers business is located, or if the property is never within the jurisdiction in which the retailer’s business is located.

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

Sales and Use Tax Regulation 1802, *Place of Sale and Use for Purposes of Bradley-Burns Uniform Local Sales and Use Taxes*, interprets and makes specific the laws governing the “place of sale” for purposes of allocating local tax revenues to local jurisdictions. Under subdivision (a)(2)(B), if a retailer has *more than one* place of business in this state participating in the sale, then the place of sale is where principal negotiations are carried on.

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

² RTC Section 7203.1.

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Sales of Jet Fuel. Under current law,³ the place of sale for *all* jet fuel sales for purposes of local sales tax is the point of delivery of the fuel into the aircraft, even if the retailer's other California places of business participate in the sale. Current law also contains specific provisions applicable to the local tax allocation of jet fuel delivered to aircraft at San Francisco and Ontario international airports and at airports located in a local jurisdiction that differs from the jurisdiction that owns or operates the airport (referred to as "multijurisdictional airports").

Government Code (GC) Section 53084.5⁴ prohibits a local agency, including a city, county, or city and county, from entering into an agreement that results in the payment, transfer, diversion or rebate of any Bradley-Burns local tax revenues, when both of the following apply:

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

The law specifies that the above prohibition does NOT apply to certain agreements related to the following:

- A retailer that expands its operations into another jurisdiction with the result that the retailer is conducting a comparable operation within the jurisdiction of both local agencies.
- A reduction in the use tax proceeds that are distributed to the originating local agency through one or more countywide pools.
- Any agreement to pay or rebate Bradley-Burns local tax revenue related to a buying company, which is defined as a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services for the other entity, as defined in specified RTC statutes and regulations.
- Any agreement to pay or rebate any local use tax revenue related to a use tax direct payment permit issued under RTC 7051.3.
- Bradley-Burns tax proceeds provided by a local agency to a retailer if those proceeds are used to reimburse the retailer for the construction of public works improvements that serve all or a portion of the territorial jurisdiction of that local agency.

Proposed Law: This bill repeals and adds GC Section 53084.5, which prohibits a local agency from entering into an agreement that results in the payment, transfer, diversion or rebate of Bradley-Burns local tax revenues to any person for any purpose when both of the following apply:

- 1) The agreement results in a reduction in Bradley-Burns tax revenues that, in the absence of the agreement, would be received by another local agency.
- 2) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

The bill eliminates all exceptions contained in the current version of GC Section 53084.5, other than the exception for an agreement to pay or rebate any use tax revenue related to a use tax direct payment permit issued under RTC 7051.3.

When an agreement that results in the payment, transfer, diversion or rebate of Bradley-Burns local tax revenues that would be received by another local agency is NOT prohibited by the section, the bill requires a local agency entering into such an agreement to do the following:

³ RTC Section 7205, subdivision (b)(2); RTC Section 7204.03; California Code of Regulations, title 18, Regulation 1802, subdivision (b)(6).

⁴ Added by Senate Bill 27 (Ch. 4, Stats. 2009)

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- Post the proposed agreement on its Internet Web site for at least 30 days prior to ratification or approval of the agreement.
- Notify the other local agency by certified mail at least 60 days prior to ratification or approval of that agreement.
- Post on its Internet Web site any agreements that the local agency entered into prior to the effective date of this bill, which are still in effect.

This bill states that the provisions should not be interpreted to limit the ability of a local agency to contract with or otherwise enter into an agreement pursuant to subdivision (b) of RTC Section 7056.

The prohibition will not apply to any mutual tax revenue sharing agreement between local agencies to pay, transfer, or divert tax revenues to another local agency where the agreement would not result in the payment, transfer, diversion, or rebate of those tax revenues to a retailer.

The bill is effective January 1, 2016.

Legislative History: The Legislature has considered several bills to address local agency sales and use tax rebate agreements:

AB 178 (Chapter 462, Statutes 1999, Torlakson and Runner) prohibits cities, counties, and redevelopment agencies from offering any financial assistance to an automobile dealership or a big box retailer that relocates from one city or county to another community in the same market area, unless the receiving community offers a contract to share some of the resulting local sales tax revenues with the other city or county.

SB 114 (Chapter 781, Statutes 2003, Torlakson) eliminates the authority of a redevelopment agency or local agency to provide financial assistance to an automobile dealer or a big box retailer that is relocating from one community to another community within the same market area.

SB 983 (Hernandez, 2014) excludes from the definition of “buying company” under GC Section 53084.5 a retailer that contracts to sell through a card lock system. The bill passed out of the Senate and but changed subject matter in the Assembly.

Commentary:

1. Effect of the bill. This bill eliminates certain exemptions from the prohibition in GC Section 53084.5. Those exemptions are:

- A retailer that expands its operations into another jurisdiction with the result that the retailer is conducting a comparable operation within the jurisdiction of both local agencies.
- Local tax proceeds provided by a local agency to a retailer to reimburse the retailer for the construction of public works improvements that serve all or a portion of the territorial jurisdiction of that local agency.
- An agreement involving reductions in local use tax distributed through the countywide pool process.
- An agreement to pay or rebate local tax revenue relating to a buying company.

The bill requires local agencies entering into agreements involving reductions in local tax revenues that otherwise would be received by another local agency to notify that other local agency by certified mail at least 60 days prior to ratification or approval of these proposed agreements. The local agency must post these proposed agreements on its Internet Web site for at least 30 days prior to their ratification or approval. Additionally, the bill requires local agencies to post on their Internet Web site any of these agreements entered into prior to the effective date of SB 533 that are still in effect.

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2. **The July 6, 2015 amendments** clarify that the prohibition will not apply to any mutual tax revenue sharing agreement between local agencies to pay, transfer, or divert tax revenues to another local agency, and where the agreement would not result in the payment, transfer, diversion, or rebate of those tax revenues to a retailer. **The June 10, 2015 amendments** (1) specified that the bill's prohibition will not apply to a local agency that has a mutual tax revenue sharing agreement with each local agency that is affected by the agreement, and (2) made nonsubstantive, technical amendments.
3. **The bill does not impact the BOE's administration of the local tax.** Once the BOE disburses funds to cities and counties based on the Bradley-Burns laws and regulations, the cities and counties then control how the money is spent or allocated.

Administrative Costs: This bill would not impact the BOE's administrative costs.

Revenue Impact: This bill would not affect state revenues.

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