

[Assembly Bill 2321](#) (Rodriguez)

Date: 04/20/16

Program: Local Sales and Use Tax

Sponsor: League of California Cities

Sections: Revenue and Taxation Code 6292, 6293, and 6294

Vehicle Code 4750.5, 9928, and 38211

Effective: January 1, 2017

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**Summary:** Requires the Department of Motor Vehicles (DMV) to identify the applicable tax area code for the city or county use tax based on specific address data provided by a vehicle or vessel purchaser. Requires the Board of Equalization (BOE) to allocate the 1% local use taxes directly to the city or county where the purchaser registers the vehicle or vessel based on the tax area code information.

**Summary of Amendments:** Since the previous analysis, the bill was amended to clarify DMV's process, correct drafting errors, and make several BOE-suggested administrative and technical amendments.

**Purpose:** According to the author's office, to allocate the Bradley-Burns local use taxes directly to the city or county where the purchaser registers the vehicle or vessel.

**Fiscal Impact Summary:** Unknown shift in local use tax revenues.

**Existing Law:** Existing law<sup>1</sup> requires any person who purchases a vehicle or undocumented vessel from a person who is not licensed by DMV as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer to pay the use tax to DMV. The DMV acts as an agent for the BOE by collecting the state and local use tax due on private party transfers of vehicles (on-highway and off-highway) and undocumented vessels when the transfer is registered by the purchaser.

**Vehicle Code (VC).** Existing law<sup>2</sup> requires the DMV to withhold the registration or identification or the transfer of ownership of a vehicle, off-highway vehicle, or undocumented vessel<sup>3</sup> in a private-party vehicle or undocumented vessel sale until the purchaser pays the use tax, together with any applicable penalty unless the BOE determines that no use tax is due. The DMV transmits all use tax and penalty collections to the BOE at least monthly, accompanied by a schedule as prescribed by the DMV and BOE.

**Revenue and Taxation Code (RTC).** Under the Sales and Use Tax Law,<sup>4</sup> the purchaser of a vehicle, off-highway vehicle, or undocumented vessel must pay the use tax to the DMV when the seller is not a licensed manufacturer, remanufacturer, dealer, dismantler, or lessor retailer, or when the seller is not required to hold a seller's permit by reason of the number, scope, and character of their sales of those vehicles. In such cases, the seller is not required or authorized to collect the use tax from the purchaser, so the purchaser must pay the use tax to the DMV acting on behalf of the BOE.

The applicable use tax rate is based on the address provided to the DMV by the registered owner of the vehicle or undocumented vessel.

**Existing Bradley-Burns Uniform Local Sales and Use Tax Law<sup>5</sup>** authorizes counties to impose a local sales and use tax. This tax rate is fixed at 1.25% of the sales price of tangible personal property sold at retail in the county, or purchased for use within the county. Under current law, cities are authorized to

<sup>1</sup> RTC Sections 6282, 6292, 6293, and 6294.

<sup>2</sup> VC Sections 4750.5, 9928, and 38211.

<sup>3</sup> Undocumented vessels are defined to mean any vessel which is not required to have a marine certificate issued by the United States Coast Guard.

<sup>4</sup> RTC Sections 6292, 6293, and 6294

<sup>5</sup> Part 1.5 of Division 2 (commencing with Section 7200) of the RTC.

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impose a local sales and use tax rate of up to 1%. The city sales and use tax rate is credited against the county rate so that the combined rate does not exceed 1.25%.

Of the 1.25%, cities and counties use 1% to support general operations. It is allocated to a city when the sale or use takes place in a city, or to a county when the sale or use takes place in the unincorporated area of a county.<sup>6</sup> The remaining 0.25% is designated by statute for county-wide 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. All cities and counties currently impose Bradley-Burns local taxes at a total uniform rate of 1.25%.

**Allocation of Bradley-Burns local sales tax.** Where the local tax is a sales tax, that tax is allocated to the place of sale.<sup>7</sup> 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. If a retailer has more than one place of business in this state participating in the sale, the place of sale is where the principal negotiations occur. Under certain conditions, the sales tax is allocated through the countywide pool. For example, certain sellers like auctioneers, construction contractors, itinerant vendors, mobile food trucks, and vending machine operators are authorized to report their local sales tax on a countywide basis.

**Allocation of Bradley-Burns local use tax.** Local use tax is allocated to the jurisdiction of the first functional use of the purchased property. This usually is accomplished by allocating the local use tax indirectly to the jurisdiction through its countywide pool. However, current Regulation 1802, subdivision (d), provides that a retailer must report the local use tax directly to the jurisdiction of first functional use where the transaction totals \$500,000 or more. Taxpayers who report use tax allocated through the countywide pool include private party transactions of vehicles, vessels, and aircraft, long term vehicle leases, construction contractors (materials used in construction contracts), and out-of-state sellers who ship merchandise directly to California consumers from inventory located outside the state.<sup>8</sup>

**Countywide pools.** Existing law and regulations require direct allocation of local sales and use tax under some circumstances, but the use of countywide pools is another accepted method for allocating local tax under the law. It is based on the BOE's long-standing administrative policy of distributing tax revenues through 58 countywide pools for transactions that cannot be easily associated with a specific location. The countywide pools prorate local tax to each city and the unincorporated area of the county proportionally, based on each jurisdiction's proportion of the total local sales and use tax revenues reported in the county. The countywide pool accounts for approximately 12% of the total local sales and use tax reported, with use tax accounting for the majority of the pooled revenues. For DMV private-party vehicle and vessel transactions, the BOE has always allocated the local use tax indirectly using the countywide pools.

Used for years by the BOE, the countywide pooling method has been validated by the courts. In *The City of San Joaquin v. State Board of Equalization*, (1970) 9 Cal.App.3d 365, the court stated that the pooling system is a valid technique that "subverses the interest of all cities and counties."

The **Transactions and Use Tax Law**<sup>9</sup> authorizes cities and counties to impose transactions and use taxes (district) taxes under specified conditions. Counties may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the tax ordinance is approved by the required percentage of voters in the city.

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<sup>6</sup> For ease of discussion, the analysis will refer to the jurisdiction as the "unincorporated area of the county," though it is technically the county as a whole.

<sup>7</sup> RTC Section 7205, Sales and Use Tax Regulation 1802, subdivisions (a) and (b).

<sup>8</sup> However, as state above, if the transaction totals \$500,000 or more, the seller or purchaser must report the local use tax revenues from that sale or purchase directly to the city, county or city and county where the first functional use of the property is made.

<sup>9</sup> Part 1.6 of Division 2 of the RTC, (commencing with Section 7251); Part 1.7 of Division 2 of the RTC (commencing with Section 7280).

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District use tax is imposed on the storage, use, or other consumption of tangible personal property, purchased for use in a district. For private party vehicle and undocumented vessel transactions, DMV collects any applicable district use taxes from the purchaser. The applicable district use tax is based on where the purchaser will register the vehicle or vessel, which is generally where the purchaser resides. If the purchaser resides in a city or county that imposes a district tax, then the purchaser is liable for those district use taxes and must pay those taxes to the DMV. The BOE allocates district use taxes directly to the city or county where the purchaser registers the vehicle or vessel.

**Proposed Law:** This bill requires the DMV to determine all Bradley-Burns Uniform local use taxes that a purchaser registering a vehicle or vessel, purchased through a private vehicle or vessel sale must pay based upon specific address data to which the purchased vehicle or vessel will be registered. Specifically, this bill:

- Requires DMV to use the specific address data to identify the correct tax area code for the applicable city or unincorporated area of the county where the vehicle or vessel shall be registered and to which the local use tax shall be directly allocated.
- Requires the BOE to provide a list of tax area codes applicable to each city or unincorporated area of the county for purposes of allocating the local use tax directly.
- Requires the DMV to transmit the tax area codes and the amount of local use tax attributable to those tax area codes to the BOE.
- Requires the BOE to allocate the local use taxes transmitted by the DMV to the city or unincorporated area of the county where the purchaser registers the vehicle or vessel.
- Requires the BOE to reimburse the DMV for any costs associated with this bill.
- Declares the intent of the Legislature that DMV and BOE administer the bill's provisions in a manner that ensures the applicable local use taxes and transactions and use taxes are collected and allocated directly to the specific jurisdiction where the vehicle or vessel is registered based on the tax area code.

The bill takes effect on January 1, 2017.

### **Commentary:**

- 1. The April 20, 2017 amendments** (1) delete the requirement for DMV to utilize all available tools to determine the applicable tax rate, as it is already ongoing practice, to the extent feasible, to do so, (2) correct certain drafting errors, and (3) make several BOE-suggested administrative and technical amendments.
- 2. Intent of the bill.** According to the author's office, DMV collects approximately \$70 million annually in Bradley-Burns local use tax on behalf of the BOE. The amount allocated to cities and counties through the countywide pool disadvantages smaller and depressed cities. These cities must absorb the cost to repair the city's infrastructure and mitigate pollution. Accordingly, these cities would benefit by receiving the 1% local use tax on a direct basis, instead of indirectly via the countywide pool.
- 3. Effect of the bill.** Currently, the unincorporated area of the county and each city in that county receives an amount of the local use tax based on percentages of direct allocations of tax reported on returns. Under this bill, the 1% local use tax would be allocated directly to the city or unincorporated area of the county where the purchaser registers the vehicle or vessel.

The following table illustrates the proposed 1% local use tax allocation shift from one jurisdiction to another. The 1% local use tax due on the statewide average vehicle purchase price of \$3,000 is \$30. The table uses hypothetical county-wide pool percentages to illustrate the revenue shift of a purchaser who resides in the City of Sacramento where the vehicle will be registered.

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Jurisdiction	County-wide pool % (based on direct reporting)	Current Law: Indirect Allocation	Proposed Law: Direct Allocation	Change
Unincorporated Area - Sacramento County	10%	\$3.00	0	-\$3.00
Citrus Heights	13%	\$3.90	0	-\$3.90
Elk Grove	18%	\$5.40	0	-\$5.40
Folsom	19%	\$5.70	0	-\$5.70
Galt	9%	\$2.70	0	-\$2.70
Isleton	4%	\$1.20	0	-\$1.20
Rancho Cordova	9%	\$2.70	0	-\$2.70
Sacramento	18%	\$5.40	\$30.00	+\$24.60
Total		\$30.00	\$30.00	

Conversely, if a purchaser resides in the unincorporated area of the county, the 1% local use tax of \$30 would be directly allocated to the unincorporated area of Sacramento County. Sacramento County would receive a net gain of \$27.00 (\$30.00 - \$3.00). Each city in Sacramento County would lose their respective indirect (pool) allocation of the 1% local use tax.

- Bradley-Burns countywide pool percentages.** The BOE has a long-standing policy of allocating a portion of local sales and use tax revenues through the countywide pool for those transactions that cannot be easily identified to a specific location. The local use tax revenues represent the majority of countywide pool revenues. DMV private party transactions represent one of several types of transactions that are reported on a countywide basis and allocated through a countywide pool.

For the fiscal years 2013-14 and 2014-15, of the total 1% local sales and use tax revenues distributed to local jurisdictions, approximately 88% was distributed on a direct basis, with 12% distributed through the countywide pool. DMV private party vehicle and vessel transactions account for approximately 9% of the countywide pool amount:

Fiscal Year	1% Local Sales and Use - Countywide Pool	1% - local use tax - DMV private party transactions	DMV % of countywide pooled amount
2013-14	\$707 million	\$65 million	9%
2014-15	\$756 million	\$68 million	9%

- Potential tax code identification process by DMV.** Currently, DMV determines the correct countywide tax area code for the county where the purchaser will register the vehicle using 58 countywide codes. Under this bill, DMV will use 58 unincorporated area county codes and 482 incorporated city codes. DMV staff will be required to determine whether the purchaser resides in the incorporated city or in the unincorporated area of the county and then select the applicable code.

DMV currently uses zip codes to determine the appropriate tax rate. A number of zip codes overlap city and county boundaries. DMV has implemented several options to ensure the correct tax rate is collected when a purchaser’s address is not within the city’s or county’s boundaries but has a postal zip code that overlaps with a city or county imposing a district tax.

**6. Change creates winners and losers.** Any change to local use tax allocation creates winners and losers among local jurisdictions. If one jurisdiction receives more revenues, the other jurisdictions will receive less. Since the countywide pool is based on reported local tax revenue, those cities or counties with a greater proportion of residential properties would be the likely “winners.” Using the chart in comment two, for example, the City of Galt’s countywide pool percentage is 9%. If it were a “bedroom” community and its residential population is actually 11% of Sacramento County’s population, it is likely that the percentage of local tax revenue from private vehicle sales in Sacramento County to residents of the City of Galt would be closer to 11% as well. Under this bill, Galt would therefore receive 11% of the total local tax revenue from private vehicle sales via direct allocation, instead of 9% through the countywide pool. Conversely, those cities and counties with a lesser proportion of residential properties would be the “losers.”

Additionally, under this bill, all local jurisdictions will share in the BOE’s new costs incurred to reimburse DMV for its programming changes and costs related to the additional processing time to identify 482 new city codes and 58 new unincorporated area county codes, including costs to train staff, develop procedures, and revise manuals. Cities receiving some additional revenue by a direct allocation will have added costs to implement this bill.

**7. Analysis of revenue changes between direct or indirect (countywide pool) allocation.** Using DMV data of private party vehicle registrations for fiscal year 2013-14, revenue from allocating the 1% local use tax on an indirect (countywide pool) basis versus a direct basis were compared. Approximately 1.5 million transactions were matched to a tax area code to determine the direct allocation. The direct allocation results were then compared to the countywide pool allocation. The following tables show the changes in revenue between the current indirect (countywide pool) allocation and the proposed direct allocation. A summary of the [DMV data analysis is attached](#). This summary also includes a breakdown of the revenue changes for each individual city and county.

Description	Percentage
Percentage of winners	52%
Percentage of losers	48%
Total percentage	100%

Description	Percentage
Percentage of jurisdictions gaining more than 25%	38%
Percentage of jurisdictions within plus or minus 25%	30%
Percentage of jurisdictions losing more than 25%	32%
Total percentage	100%

Description	Number
Total number of “winning” cities	230
Total number of “losing” cities	251
Total number of “winning” counties	48 <sup>10</sup>
Total number of “losing” counties	6

<sup>10</sup> City and county of San Francisco was counted as a city. There were three counties in which the revenue change was negligible.

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**8. Administrative concerns.** BOE staff has identified certain misplaced provisions.

- Since the bill is requiring a change to the Bradley-Burns local tax law, those changes should be placed under the Bradley-Burns law, instead of under Part 1 of the Sales and Use Tax Law.
- The references made to the Transactions and Use Tax Law in subdivisions (b) and (f) of VC Sections 4750.5, 9928, and 38211 should be stricken. The district taxes are already directly allocated based on where the purchaser registers the vehicle or vessel.

Suggested amendments are detailed on pages 7 and 8.

**Costs:** BOE will incur minor administrative costs to update the regulation, revise audit and compliance manuals, program computers, and train staff. A cost estimate is pending.

Additional costs will be incurred to reimburse DMV for its costs, as set forth in BOE's and DMV's Interagency Agreement. Additionally, since the current local tax cost allocation model provides for the allocation of sales and use tax program costs, any increased costs associated with this bill would be borne by the state General Fund, the Bradley-Burns local entities, and the special tax jurisdictions.

**Revenue Estimate:** Enactment of this bill would not affect the state's revenues. However, it would result in the shifting of local use tax from one city or unincorporated area of the county to another.

As an order of magnitude, the total DMV local use tax revenue allocated via countywide pool for fiscal year 2013-14 was \$65 million and \$68 million for FY 2014-15. These revenues were distributed to local jurisdictions through the countywide pool. This bill creates an unknown shift in revenue from one jurisdiction to another.

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

STATE BOARD OF EQUALIZATION  
PROPOSED AMENDMENTS TO AB 2321 as amended April 20, 2016

AMENDMENT 1

On page 3, line 6, substitute "Local use" for "Use" after "(e)"

AMENDMENT 2

On page 3, line 8, insert "directly" after "shall be allocated"

AMENDMENT 3

On page 3, line 9, insert "determined" after "purchased vehicle,"

AMENDMENT 4

On page 4, line 6, substitute "Local use" for "Use" after "(e)"

AMENDMENT 5

On page 4, line 8, insert "directly" after "shall be allocated"

AMENDMENT 6

On page 4, line 9, insert "determined" after "purchased vehicle,"

AMENDMENT 7

On page 4, line 36, substitute "Local use" for "Use" after "(e)"

AMENDMENT 8

On page 4, line 38, insert "directly" after "shall be allocated"

AMENDMENT 9

On page 4, line 39, insert "determined" after "purchased vehicle,"

AMENDMENT 10

On page 5, add new statute after line 4 as follows:

SEC. 4. Section 7206 is added to the Revenue and Taxation Code, to read:

7206. (a) Notwithstanding any other provision of law, in connection with any use tax imposed pursuant to this part with respect to the purchase of a vehicle required to be registered under the Vehicle Code or a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code or an undocumented vessel required to be registered under the Vehicle Code, and for which the purchaser is required to pay the use tax to the Department of Motor Vehicles pursuant to Sections 6292, 6293, or 6294, the local use tax shall be allocated directly to the participating jurisdiction where the purchaser registers the purchased vehicle or vessel.

(b) For purposes of this section, "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.

AMENDMENT 11

On page 6, line 2, delete “and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code)

AMENDMENT 12

On page 6, line 30, delete “and local transaction and use taxes”

AMENDMENT 13

On page 7, line 16, delete “vehicle” and insert “vessel” after “and to which the”

AMENDMENT 14

On page 7, line 24, delete “and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code)

AMENDMENT 15

On page 8, line 20, delete “and local transaction and use taxes”

AMENDMENT 16

On page 9, line 13, delete “and the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code)

AMENDMENT 17

On page 10, line 1, delete “and local transaction and use taxes”