Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 531 (Glazer) – As Amended April 29, 2019

SENATE VOTE: 27-8

SUBJECT: Local agencies: retailers.

SUMMARY: Prohibits a local agency from entering into any agreement that results in a rebate of Bradley-Burns local tax revenues to a retailer in exchange for that retailer locating within that agency's jurisdiction. Specifically, **this bill**:

1) Specifies that, on or after January 1, 2020, a local agency shall not enter into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of any Bradley-Burns sales and use tax revenue to any retailer in exchange for the retailer locating or continuing to maintain a place of business that serves as the place of sale within the territorial jurisdiction of the local agency if that place of business generates revenue, from the sale of tangible property delivered to and received by the purchaser in another jurisdiction, for the local agency.

2) Defines "place of sale" to mean the place at which retail sales are consummated, as specified.

3) Contains findings and declarations that this bill addresses a matter of statewide concern rather than a municipal affair; therefore, it applies to all cities, including charter cities.

EXISTING LAW:

1) Imposes the sales tax on every retailer "engaged in business in this state" that sells tangible personal property, and requires them to register with the California Department of Tax and Fee Administration (CDTFA), as well as collect and remit appropriate tax at purchase and remit the amount to CDTFA.

2) Allows cities, counties, and specified special districts to increase the sales and use tax, also known as district or transactions and use taxes.

3) Allows CDTFA to collect sales taxes from retailers, deposit the state share in the General Fund, and then allocate the local share of the Bradley-Burns sales tax and any district tax to the appropriate jurisdiction.

4) Bans cities and counties from subsidizing the relocation of big box retailers and auto malls within the same market area.

5) Prohibits a local agency from entering into an agreement that would result in the payment, transfer, diversion, or rebate of Bradley-Burns local tax proceeds to a retailer if the agreement results in a reduction of revenue that is received by another local agency when the retailer continues to maintain a physical presence and location within that other local agency.

FISCAL EFFECT: None

COMMENTS:

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

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

   For a retailer that has one location in the state, that location is determined to be the place of sale for all of its sales. CDTFA does so even if title to the property passes from seller to buyer outside of the jurisdiction of the seller, or if the property never enters the jurisdiction of the seller. For example, CDTFA would determine that all local taxes attributable to a furniture store in the City of Sacramento would be sourced to that city, regardless of where the store delivered furniture to the buyer.

   For a retailer that has more than one location in the state, CDTFA determines the location based on the location where principal negotiations occurred. In the above example, if a retailer has more than one location, CDTFA considers the place of business the location where the retailer takes the order, regardless of whether they subsequently forward it to another location for delivery. For example, if a resident of the City of Davis called a furniture store in Sacramento to order a lamp, which the store shipped to Davis from its location in Vacaville, CDTFA would consider Sacramento the place of business for purposes of allocating the local tax.

   For a retailer that has no location in the state, but has property in the state from which it fills orders, CDTFA considers the place of sale as the location from which the property is shipped. For example, if a resident of the City of Davis ordered a lamp from an internet retailer that did not have a retail location in the state, but filled the order from its warehouse in Vacaville, CDTFA would consider Vacaville the place of sale.

   Typically, allocating Bradley-Burns sales taxes at the place of sale leads to competition among cities and counties to attract land uses that generate local revenues.

2) **Economic Development Incentives.** Local governments engage in a wide variety of economic development activities to build their tax bases. In this respect, local officials use their regulatory powers to direct spending and tax policies, which, in turn, influence where, when, and how the private sector invests capital and improves real property.

AB 562 (Williams), Chapter 740, Statutes of 2013, established requirements for local agencies to meet before approving any subsidy and during the term of such subsidies. In arguing for the bill, the author noted, "Each year, local governments give out billions of dollars in tax incentives to corporations in hopes of increasing economic growth and drawing jobs for their residents…State requirements for local budgets, annual financial reports, and regular audits allow constituents to review most of the direct fiscal decisions made by local governments. However, local economic subsidies do not receive the same public scrutiny as budgets and regulatory decisions. Additionally, local governments rarely track how many jobs are created and it's impossible to know whether the jobs would have been created without the aid. AB 562 seeks to remedy this shortcoming."

AB 562 succeeded, after several years of failed attempts, in requiring local agencies to gather and make available to the public – in writing and on the agency's website – specified information about any subsidy of $100,000 or more, both before the subsidy is approved and during the life of the subsidy.

3) **Subsidies and Warehouse Distribution Centers**. Since AB 562 was enacted, a number of news reports and studies have focused on Amazon distribution centers and the subsidies state and local agencies have granted in an effort to convince Amazon to locate in their jurisdictions. This followed on the heels of several years of controversy surrounding Amazon's avoidance of sales taxes as a cornerstone of the company's business development strategy. Among the publications and research institutes that have reported recently on the issue of local government subsidies, both generally and specifically for Amazon, are the Economic Policy Institute, the Institute for Local Self-Reliance, The Atlantic, the New Republic, the Fresno Bee, the New York Times, Good Jobs First, and others.

   According to a *New York Times* article dated December 1, 2012, "A Times investigation has examined and tallied thousands of local incentives granted nationwide and has found that states, counties and cities are giving up more than $80 billion each year to companies. The beneficiaries come from virtually every corner of the corporate world, encompassing oil and coal conglomerates, technology and entertainment companies, banks and big-box retail chains. The cost of the awards is certainly far higher. A full accounting, *The Times* discovered, is not possible because the incentives are granted by thousands of government agencies and officials, and many do not know the value of all their awards. Nor do they know if the money was worth it because they rarely track how many jobs are created. Even where officials do track incentives, they acknowledge that it is impossible to know whether the jobs would have been created without the aid…

   "A portrait arises of mayors and governors who are desperate to create jobs, outmatched by multinational corporations and short on tools to fact-check what companies tell them. Many of the officials said they feared that companies would move jobs overseas if they did not get subsidies in the United States. Over the years, corporations have increasingly exploited that fear, creating a high-stakes bazaar where they pit local officials against one another to get the most lucrative packages. States compete with other states, cities compete with surrounding suburbs, and even small towns have entered the race with the goal of defeating their neighbors...Questioned about incentives, officials at dozens of other large corporations said they owed it to shareholders to maximize profits. Many emphasized that they employ thousands of Americans who pay taxes and spend money in the local economy."

Focusing on subsidies exclusively for Amazon, the Economic Policy Institute issued a report on February 1, 2018, which states, "The expansion of Amazon's physical distribution network has coincided with a strategic business plan of negotiating millions in tax abatements, credits, exemptions, and infrastructure assistance from state and local governments in the name of regional economic development. By the end of 2016, Amazon had likely received over $1 billion in state and local subsidies for its facilities, which would include not only fulfillment centers but 'sortation' centers that only sort packages, mailing centers, and other facilities. In return for the incentives each of the fulfillment centers receives, Amazon claims to create hundreds of jobs with competitive pay and benefits.

"Using tax and other incentives to lure businesses to state and local areas is a long-running economic development strategy pursued by subnational governments. In nearly every state, businesses can receive a significantly lighter tax burden for constructing a sports stadium, filming a movie, or building a manufacturing assembly plant. The results on whether these types of community development strategies have a positive impact on job creation and growth is highly debated in popular news outlets and among researchers. And as Amazon has grown, the debate in some cases has specifically focused on Amazon."

The report found that, "When Amazon opens a new fulfillment center, the host county gains roughly 30 percent more warehousing and storage jobs but no new net jobs overall, as the jobs created in warehousing and storage are likely offset by job losses in other industries…State and local governments give away millions in tax abatements, credits, exemptions, and infrastructure assistance to lure Amazon warehouses but don't get a commensurate 'return' on that investment. Rather than spending public resources on an ineffective strategy to boost local employment (luring Amazon fulfillment centers), state and local governments should invest in public services (particularly in early-childhood education and infrastructure) that are proven to spur long-term economic development."

4) **State Auditor and Legislative Analyst Reports.** Both the California State Auditor and the Legislative Analyst's Office (LAO) have issued reports questioning the statewide benefit of economic development incentives local agencies offer to retailers for locating in their jurisdiction. The November 2017 report from the California State Auditor entitled, "The Bradley-Burns Tax and Local Transportation Funds: Changing the Allocation Structure for the Bradley-Burns Tax Would Result in a More Equitable Distribution of Local Transportation Funding," states:

"Some counties may benefit disproportionately from the Bradley-Burns tax because of the way state law currently directs the allocation of the funds. Retailers generally allocate Bradley-Burns tax revenue based on the place of sale, which they identify according to their business structure. However, retailers that make sales over the Internet may allocate sales to various locations, including their warehouses, distribution center, or sales offices. This approach tends to concentrate Bradley-Burns tax revenue into the warehouses' or sales offices' respective jurisdictions. Consequently, counties with a relatively large amount of industrial space may receive disproportionately larger amounts of Bradley-Burns tax, and therefore Local Transportation Fund, revenue. The State could make its distribution of Bradley-Burns tax revenue derived from online sales more equitable if it based allocations of the tax on the destinations to which goods are shipped rather than on place of sale."

Similarly, a 2007 LAO report entitled, "Allocating Local Sales Taxes," states:

"The use of financial incentive does not result in net benefits to a broader economic region within the state. It simply shifts existing sales taxes from one jurisdiction to another – at the cost of government resources that could be used for other purposes The counterproductive aspects of the current system could be addressed through major reforms involving either the local sales tax allocation methodology or changes in local government's system of taxes. Both of these options would involve significant public policy trade-offs and would require changes to the state's Constitution."

5) **Bill Summary and Author's Statement.** This bill prohibits a local agency from entering into any agreement that results in a rebate of Bradley-Burns local tax revenues to a retailer in exchange for that retailer locating within that agency's jurisdiction. This bill finds and declares that it addresses a statewide concern and therefore applies to contract cities. This bill is sponsored by the author.

   The author states that, "Current tax law has created an environment that puts the power to allocate local sales tax into the hands of online retailers. These retailers can choose to allocate any and all sales tax revenues to a specific location within the state – be that a warehouse, distribution or sales center. What results is a race to the bottom as local governments offer increasingly generous rebates to these companies, often between 50-85% of the revenues generated, in exchange for locating a warehouse or sales center within their jurisdiction. Private companies profit doubly from these tax-sharing agreements, which allow them to keep both the funding from their retail sales, and the public funds siphoned to them as a rebate. California cities are sending an estimated $1 billion in taxpayer dollars back to giant corporations each year – at a time when state and local governments are scrambling to fund public safety, roads, affordable housing, and tackling the homeless crisis. The gains from these agreements are doubtful. Though warehouses may generate jobs, they are often grueling, low wage, and without benefits. This bill would prohibit tax-sharing agreements between local governments and private corporations, effectively ending the perverse competition our tax system creates."

6) **Related Legislation.** AB 2853 (Medina, 2018) would have required local agencies to publicly report specified information when providing economic development subsidies of $100,000 or more for warehouse distribution centers. The Governor vetoed AB 2853 stating, "This bill requires local governments that provide economic subsidies of $100,000 or more for warehouse distribution centers to publically report on information such as employee wage rates, independent contractor rates, and the value of employee benefit packages for each job classification created by the subsidy. There is value in taxpayers knowing whether economic development incentives ultimately benefit their community. That is why I signed legislation in 2013 that required local agencies to provide information about the expected and actual impacts of approved economic development subsidies. This bill, however, significantly expands current law and goes too far by adding reporting rules that will be overly burdensome to a single industry. It may actually hinder efforts to improve business opportunities in local communities, which is an outcome no one desires."

   SCA 20 (Glazer, 2018) would have amended the California Constitution to provide that the retail sale of tangible personal property transacted online is consummated at the point of delivery. The bill was held in the Senate Appropriations Committee.

AB 485 (Medina) is similar to AB 2853 and passed by this Committee on April 1, 2019, with a 6-2 vote. AB 485 is currently pending in the Senate Governance and Finance Committee.

7) **Policy Considerations.** Both the State Auditor and the LAO have suggested replacing situs-based allocation with a population based allocation system to reduce incentives for local governments to use their economic development powers to promote retail developments. Specifically, Internet retailers may identify their warehouses or distribution centers as their places of sale when remitting Bradley-Burns tax, even though they may ship their taxable goods to locations across the state. As a result, local jurisdictions with relatively more warehouses or distribution centers receive Bradley-Burns tax allocations that are disproportionate to their purchases. This disparity is likely to increase in the future due to the rapid growth of e-commerce. If adopted, this bill will treat one of the negative consequences of the current allocation system by reducing competition between local agencies, however, in order to address the larger, more underlying problem, broad tax reform is likely needed. Without comprehensive tax reform, and because local agencies will continue to compete using alternative tax incentive tools, the Committee may wish to consider the overall impact this bill will have in curbing the utilization of taxpayer dollars and removing sales tax allocation disparities.

8) **Arguments in Support.** According to the League of California Cities, "The League's policy states that sales tax agreements involving online retailers should be prohibited going forward because they have the effect of encouraging revenue to be shifted away from numerous communities and concentrated to the benefit of one agency with a portion rebated to a retailer…With the increasing volume of Internet sales, a tremendous amount of sales tax revenue can be concentrated in a retailer's warehouse, sales office or fulfillment center, which makes locating these facilities an enticing prospect for local agencies. An agreement that benefits one agency by shifting the point of sale can come at the fiscal harm to many others.

   "SB 531 would prohibit future rebate agreements that result in Bradley-Burns Sales and Use Tax revenue from being shifted away from numerous communities and concentrated to the benefit of one agency with a portion rebated to a retailer."

9) **Arguments in Opposition.** According to the City of Perris, "The City has a population of approximately 73,000 residents, the median age of our citizens is 27.3 years old, our median household income is $54,657 (an increase of 4% from last year), and has a poverty rate of 21.2%. The national poverty rate is 12.3%, based on the U.S. Census Bureau estimates.

   "In recent years, the City of Perris has been able to use a particular economic tool available to our community in order to begin the slow climb out of generational poverty. We have done this by leveraging sales tax rebate incentives. Through this development tool, the City of Perris has been able to attract and retain e-commerce centers. These e-commerce centers have provided living wage jobs to families in Perris. The growth in our median household income can be directly attributed to these e-commerce centers.

   "In addition, the revenues that come with these e-commerce centers have allowed the City of Perris to provide critical services such as fire and police protection. However, more critically to the quality of life of its residents, these revenues generated by our e-commerce centers have allowed us to provide parks and recreation programs that did not exist before. In fact, we have been recognized by the State Department of Parks and Recreation for our efforts, receiving awards in the last three consecutive years. All of these benefits are threatened by Senate Bill 531."

10) **Double-Referral.** This bill is double-referred to the Revenue and Taxation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO
Cities of Placentia and Rancho Cucamonga
League of California Cities

Opposition

California Retailers Association
Cities of Fresno, Moreno Valley, and Perris

Analysis Prepared by: Jimmy MacDonald / L. GOV. / (916) 319-3958