

Date of Hearing: July 1, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 533 (Pan) – As Amended June 10, 2015

SENATE VOTE: 25-11

SUBJECT: Cities and counties: sales and use tax agreements.

SUMMARY: Revises and recasts existing law which prohibits a local agency from entering into an agreement with a retailer that would result in the payment 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. Specifically, **this bill:**

- 1) Revises and recasts existing law which prohibits a local agency from entering into any form of agreement with a retailer that would involve the payment, transfer, or rebate of any amount of Bradley-Burns local tax proceeds if the agreement results in a reduction in the amount of revenue that is received by another local agency from the same retailer if it is located within that other local agency, and continues to maintain a physical presence and location there.
- 2) Requires a local agency entering into an agreement that results in a reduction of Bradley-Burns revenue that would be received by another local agency in the absence of the agreement to do the following:
 - a) Post the proposed agreement on its Internet Web site for at least 30 days prior to ratification or approval of the agreement by its governing body; and,
 - b) Notify the other local agency by certified mail addressed to the attention of the chief executive officer of that other local agency at least 60 days prior to ratification or approval of the agreement by its governing body.
- 3) Requires a local agency to post any agreement it has entered into on its Internet Web site that results in a reduction of Bradley-Burns revenue to another local agency, in the absence of the agreement, including any agreements entered into prior to January 1, 2016, that are still in effect.
- 4) Removes the following agreements exempted under existing law, which therefore prohibits the following agreements:
 - a) A reduction in the use tax proceeds that are distributed to a local agency through one or more countywide pools;
 - b) A retailer that expands its operations into another jurisdiction with the result that the retailer is conducting a comparable operation in both local agencies; and,
 - c) Bradley-Burns local 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 the local agency; and,

- d) Any agreement to pay or rebate any tax revenue resulting from the imposition of a sales and use tax relating to a buying company.
- 5) Maintains the exemption in current law for any agreement to pay or rebate Bradley-Burns local use tax revenue relating to a use tax direct payment permit.
- 6) Provides an additional exemption and specifies that this bill does not apply to a local agency that has a mutual tax revenue sharing agreement with each local agency that would be affected by the form of the agreement prohibited under 1), above.
- 7) Defines local agency to mean a chartered or general law city, a chartered or general law county, or a city and county, of this state.
- 8) Defines "person" pursuant to existing law to mean "any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporations, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit."
- 9) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made, pursuant to current law governing state mandated local costs.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Bradley-Burns Local Sales and Use Tax Law.** The Bradley-Burns Local Sales and Use Tax Law authorizes counties to impose a 1% tax on the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. A city may impose a 0.75% sales and use tax which is credited against the county's tax. The remainder of the county rate (0.25%) is designated under current law for county transportation purposes.

Bradley-Burns sales taxes are allocated on a "situs-based" system meaning that the revenue is allocated to the city or county that served as the place of sale in a transaction. Generally, the place of sale is the retailer's sales location, the place where the transaction occurred. The Bradley-Burns tax revenues from sales within a city's limits are allocated to that city and revenues from transactions occurring in a county's unincorporated area are allocated to the county.

- 2) **Fiscalization of Land Use.** The distribution of Bradley-Burns revenue based on the retailer's sales location gives local governments the fiscal incentive to make land use decisions that favor revenue-generating uses for land, as opposed to land uses that may require extensive public services. Given the greater importance of sales tax revenue as opposed to other priorities, like affordable housing or open space and agricultural lands, the fiscalization of land use has led cities and counties to provide tax rebates in some cases in order to attract new retail development. *Evaluating Options for Sales Tax Reform* by

Michael Coleman, author of the online California Local Government Finance Almanac (CaliforniaCityFinance.com), states "Current sales tax incentive agreements in California rebate amounts ranging from 50% to 85% of sales tax revenues back to the corporations. Today, experts familiar with the industry believe that between 15% to 20% of local Bradley-Burns sales taxes paid by California consumers is diverted from local general funds back to corporations; over \$1 billion per year."

- 3) **Prior Legislation.** There have been several attempts in the Legislature to address the issue of rebating sales tax and to address retailers taking advantage of the fiscalization of land use. AB 178 (Torlakson), Chapter 462, Statutes of 1999, required a community that uses financial incentives to lure a big-box retailer or auto dealer from a neighboring community to offer the other community a contract apportioning the sales taxes generated by the business between the two jurisdictions. The provisions of AB 178 were replaced by tougher restrictions, with the enactment of SB 114 (Torlakson), Chapter 781, Statutes of 2003. SB 114 prohibited a community from providing any form of financial assistance to a vehicle dealer or big-box retailer relocating from a neighboring community within the same county.
- 4) **Existing Law and Bill Summary.** SB 27 (Hancock), Chapter 4, Statutes of 2009, sought to prohibit cities or counties from using Bradley-Burns sales tax rebates as an incentive to draw sales tax-generating activities away from other communities. SB 27 prohibits a local agency from entering into any form of agreement or taking any actions that would result in the payment, transfer, diversion, or rebate of any amount of Bradley-Burns local tax proceeds to any person or for any purpose if the agreement results in a substantial reduction in the amount of tax proceeds received by another local agency from a retailer within that other local agency and when the retailer continues to maintain a physical presence and location within that other agency. This bill revises and recasts the prohibition on a local agency from entering into those agreements, beginning on January 1, 2016; however, it also removes several exemptions put in place by SB 27.

This bill removes the exemptions for the following agreements in current law: a) A reduction in the use tax proceeds that are distributed to a local agency through one or more county pools; b) 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; c) Bradley-Burns local tax proceeds provided by a local agency to a retailer if the 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 the local agency; and, d) An agreement to pay or rebate any tax revenue relating to a buying company.

This bill maintains an exemption for any agreement by a local agency to pay or rebate any use tax revenue relating to a use tax direct payment permit. Additionally, this bill does not apply to a local agency that has a mutual tax revenue sharing agreement with each local agency that would be affected by the form of agreement prohibited by this bill.

Under this bill, a local agency must post online any agreements it has entered into that results in a reduction of the amount of revenue under Bradley-Burns that, in the absence of the agreement, would be received by another local agency, including any agreements entered into prior to January 1, 2016. Additionally, with any new agreement the local agency must comply with posting requirements and notification requirements.

This bill is sponsored by the City of West Sacramento.

- 5) **Author's Statement.** According to the author, "It is becoming increasingly common practice for companies to pressure local agencies to provide a sales tax revenue rebate on the promise to book all sales from multiple sites with that local agency. There is a growing cottage industry of consultants who appear to specialize in helping companies pursue this strategy. This practice is fundamentally unfair. When the sales tax revenue from commercial activity in one jurisdiction is booked in another, the local agency that is losing the sales tax revenue must continue to provide police and fire protection services to the company since it maintains a physical presence within the territory of the local agency, and the local agency streets and other services are used and must be maintained.

"Making this practice even more nefarious, this is often done without the knowledge of the citizens, businesses and employees within the jurisdiction of the local agency agreeing to the 'deal' and without any notice to the local agency that is losing sales tax revenue as a result of the agreement. It is significant to note that many of these sales tax rebate deals result in sales tax revenue leaving California and going to corporations in other states. Yet, California local agencies are still responsible for providing the police and fire protections services and maintaining the roads and other infrastructure needs for these companies."

- 6) **Policy Consideration.** The Committee may wish to consider the following:
- a) **Mutual Tax Revenue Sharing Agreement.** A retail establishment may straddle a border with sales being made in more than one jurisdiction in which case the neighboring jurisdictions may agree to divide the sales tax proceeds by entering into a mutual agreement. This bill provides an exemption for a local agency that has a mutual tax revenue sharing agreement with each local agency that would be affected by the form of the agreement prohibited by this bill. The Committee may wish to consider, given the practical need for a tax revenue sharing agreement, if this exemption needs to be clarified to specify that this mutual tax sharing agreement does not include a retailer. This clarification would ensure that this exemption will not provide another loophole and allow the types of practices the author and proponents are trying to prevent.
 - b) **Systemic Issue.** The Committee may wish to consider that this bill maintains the situs-based sales tax allocation system for local governments, and therefore, does not adequately address the underlying problems with the fiscalization of land use.
- 7) **Arguments in Support.** The City of West Sacramento argues that current law "attempts to limit abusive sales tax agreements. However, fiscally predatory jurisdictions and a growing cottage industry of consultants dedicated to helping them still seek loopholes. SB 533 would remove the current exclusion for businesses that have 'expanded their operations into another jurisdiction with the result that the retailer is conducting a comparable operation within the jurisdiction of both agencies' an essentially meaningless qualifier that mostly serves to facilitate the very types of agreements the law is intended to preclude."
- 8) **Arguments in Opposition.** San Bernardino County argues, "If SB 533 were to pass, business owners who are prohibited from receiving economic incentives to expand operations outside of the original jurisdiction to other areas of the state, may choose to completely close down operations and move their business to a new location which may or may not exist within the boundaries of California. The bill prohibits normal incentives, designed to encourage local businesses to expand and upgrade, so they can generate additional tax revenue and jobs for the local community. The bill has the potential to bring

lawsuits against cities and counties, from other jurisdictions claiming revenue losses. SB 533 would cause tremendous complications and uncertainty for legitimate economic development."

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

REGISTERED SUPPORT / OPPOSITION:

Support

City of West Sacramento [SPONSOR]

City of Cerritos

City of San Diego

League of California Cities

Opposition

San Bernardino County

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