

NOVEMBER 2018

Local Government Guide to **California Sales, Use and Transaction Tax**

HdL  Sales Tax

ABOUT HdL COMPANIES

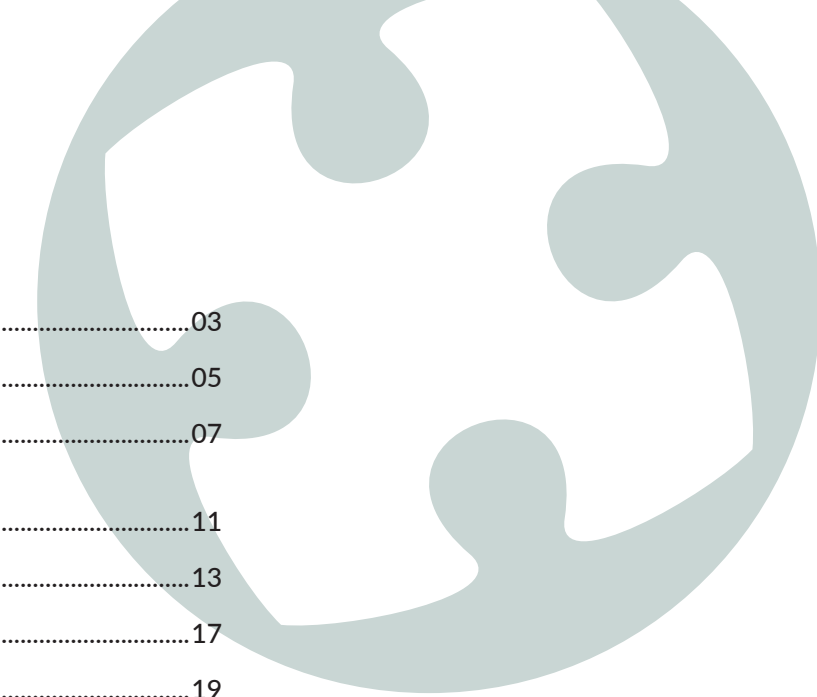
Founded in 1983, HdL was established to maximize local government revenues by providing revenue enhancement, tax administration, analytical services and software products.

Hinderliter, de Llamas & Associates (HdL) developed California's first computerized sales tax management program and was responsible for securing legislation that allowed independent verification of state allocations. In 1990, HdL Coren & Cone was established to provide property and documentary transfer tax services. HdL Software was formed in 1996 to provide software systems for other city revenues and tax administration services.

HdL's systematic and coordinated approach to revenue management and economic data analysis is used by over 500 local governments in six states. To date, HdL has recovered a cumulative total of \$2 billion in new sales and use tax revenues for client agencies. Support Services and Software are available for sales, use and transactions taxes, economic development, property taxes, business license fees, transient occupancy tax, short-term rental (STR) compliance, rent control, and cannabis regulation and taxation.

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OVERVIEW

SALES, USE AND TRANSACTIONS TAXES

California Sales and Use Tax Rates	
State General Fund	3.9375%
Local General Fund (Bradley-Burns)	1.00%
Countywide Transportation Fund	0.25%
County Realignment for Mental Health/ Welfare/ Public Safety Services	1.5625%
Public Safety Augmentation Fund	0.50%
Total	7.25%
Transactions and Use Tax Districts (Maximum Rate Per County)	2.00%
Total	9.25%*

* The maximum transactions and use tax rate of 2% does not account for authorizations by the state legislature for individual counties or cities to put new district tax measures before their voters. Therefore, total tax rate maximums exceed 9.25% in portions of Alameda, Contra Costa, Los Angeles, Monterey, San Mateo, Santa Clara and Sonoma Counties and in some transportation agencies.

STATE GENERAL FUND (3.9375%)

The state first imposed a sales tax in 1933 at a rate of 2.5% in response to the downturn in revenues resulting from the Great Depression. The tax was assessed on retailers only for statewide purposes, including education. In 1935, California added the 'use tax', to protect retailers in the state from tax-free, out-of-state competition. In subsequent years, California cities began to impose their own sales taxes. By 1967, all cities and counties had contracted with the state for collection of the tax and a statewide uniform sales and use tax was achieved.

LOCAL GENERAL FUND BRADLEY BURNS (1.0%)

One percent of the 1¼% Bradley-Burns local tax is distributed to local agencies to support local government general funds. In some counties, the county shares a portion of the one-percent rate levied within an incorporated city. The uniform tax must be levied countywide and individual cities cannot levy the tax unless it has been first adopted by the county in which the city is located. The state legislature has further preempted local governments from imposing a sales tax levy other than Bradley-Burns (Revenue and Tax Code Section 7203.5 footnote 1968).

COUNTYWISE TRANSPORTATION FUND (0.25%)

One-quarter cent of the 1¼% Bradley-Burns local tax levy is allocated to the countywide regional transportation fund.

COUNTY REALIGNMENT FOR MENTAL HEALTH/ WELFARE/PUBLIC SAFETY SERVICES (1.5625%)

In 1991, the state transferred approximately \$2.2 Billion in health, mental health and social service costs to counties. In exchange, the state provided ½ cent of its sales tax and a portion of dedicated vehicle license fee. The monies are allocated to counties based on the level of financing prior to realignment and growth on a number of factors that include caseload, population and poverty. In 2011, the state adopted a Public Safety Realignment Initiative to comply with court order requiring reductions in state prison overcrowding. The initiative shifted non-violent prisoners with less serious felonies to county jails. In exchange for taking the prisoners and the related probation, health, legal and counseling responsibilities, the state provided counties with 1.0625% of its sales tax plus a portion of its vehicle license fees. The monies are allocated by formulas using caseload, jail population and special factors such as poverty.

PUBLIC SAFETY AUGMENTATION FUND (0.50%)

In 1992, the State of California instructed county auditors to shift a portion of local property tax revenues from local governments to schools. Additional transfers to the Educational Revenue Augmentation Fund (ERAF) were made in 1993-94. To offset the losses, voters approved a ½% public safety tax that is distributed to counties based on the percentage of tax generated in their county in the prior calendar year. The counties share approximately 5% of the revenues with cities within their jurisdiction that were impacted by the ERAF transfers.

TRANSACTIONS AND USE TAX DISTRICTS

In many jurisdictions, additional sales and use taxes referred to as 'transactions taxes' have been authorized. Please see page 17 for additional information.

STATE ADMINISTRATION OF TAX

Under a reorganization initiated by the Taxpayer Transparency and Fairness Act of 2017, the California Department of Tax & Fee Administration (CDTFA), formerly the Board of Equalization, is responsible for administration of sales tax, the oversight of uniform county property assessment practices, assessment of railroad and utility properties, administration of insurance and alcohol taxes and annual establishment of the state's excise tax on fuel.

The CDTFA now administers and distributes California's sales, use and transaction taxes. Local governments are charged for their portion of shared and direct costs which are calculated annually and based on each jurisdiction's ratio of sales tax generation. The estimated fees are deducted from the quarterly tax distributions with a year-end 'true up' to match actual costs.

A separate Office of Tax Appeals (OTA) that is independent of the state's tax agencies, is responsible for conducting and deciding appeals of sales and use tax assessments as well as appeals related to personal income taxes and franchise fees. The appeals are heard and decided by three-member panels of administrative law judges.

NEXUS

In 1967, the Supreme Court ruled in *National Bellas Hess v. Illinois* that mail order retailers were not required to collect taxes for a state in which they had no physical presence. The Court followed up with an additional 1992 ruling in *Quill Corp. v. North Dakota* that limited state authority to require retailers to collect and remit a state's taxes to retailers with in-state property or employees. The rulings did not excuse buyers from paying a corresponding "use tax" on purchases from out of state retailers who did not voluntarily collect and remit the tax. However, with the acceleration in online shopping, the costs involved and the difficulty in tracking smaller purchases have created substantial shortfalls in state and local government tax receipts.

In June of 2018, the Supreme Court overturned these previous rulings in *South Dakota v. Wayfair, Inc.* by stating that online retailers no longer qualify for "an arbitrary advantage over their competitors who connect sales tax by claiming they don't have a physical presence in the state." However in the 5-4 majority opinion, the Court noted that factors in ruling on behalf of the South Dakota tax included the State's provision of a safe harbor to smaller retailers with limited transactions in the state;

protection from retroactive tax levies; single state level tax administration with uniform definitions of taxable products and services; and seller access to sales tax administration software paid for by the state.

The CDTFA expects to begin enforcing Wayfair in January 2019, although options for complying with the court's decision are still being worked out. However, even without the ruling, California has been more aggressive than most states in collecting unpaid use tax by imposing extremely broad interpretations of what constitutes "physical presence" as well as aggressive audit processes and reporting requirements. Most major online retailers including Amazon, Wayfair, Newegg and QVC are already collecting and remitting California's taxes.

A November 2017 study by the U.S Government Accountability office suggests that local governments' annual sales and use tax revenues could rise as much as \$3.00 to \$5.00 per capita once CDTFA's collection procedures are fully implemented.



ALLOCATION OF SALES TAX

Sales tax from the Bradley-Burns levy is allocated back to the jurisdiction where the sale was negotiated or the order was taken. The responsibility for collecting and remitting California's sales and use tax is imposed upon retailers engaged in business in this state who sell or rent tangible personal property. The seller is responsible for the tax but is entitled to recover it from the customer at the time of sale.

Sales tax does not apply to the sale of real property, or to services that do not result in a finished product. In addition, some products are specifically exempt from the sales and use tax. Some of the more prominent exemptions include food purchased for home consumption, goods purchased for resale, prescription medicine, aircraft used by common carriers, utilities and goods sold to the federal government.

A corresponding "use" tax is imposed upon the storage, use or consumption of tangible personal property brought from outside California. The buyer is ultimately responsible for the payment of the use tax although it is often collected by the seller for customer convenience. Most receipts from use tax and some transactions where the "place of sale" are difficult to track are placed in a county or state allocation pool and distributed back to local jurisdictions on a pro rata basis.

WHAT CONSTITUTES "PLACE OF SALE"

In order to qualify as a place of sale under the Bradley-Burns California Sales and Use Tax Law and receive the local sales tax allocation, certain criteria must be met:

- The location must hold a valid seller's permit with the California Department of Tax and Fee Administration.
- The location must be the retailer's permanent place of business in this state.
- The employees permanently assigned to the location must participate in the sale by doing one of the following:
 - Holding a stock of goods available for sale
 - Negotiating sales
 - Accepting orders

SERVICES

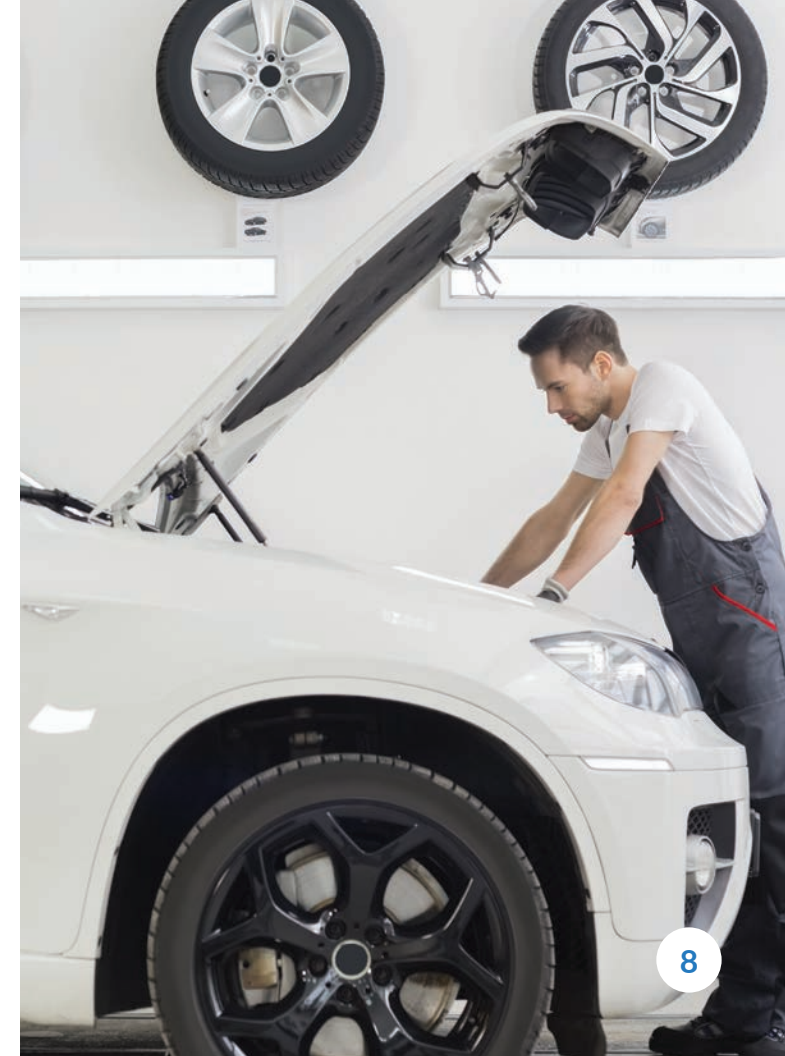
Services are only taxable if they are a part of the sale or if the true object of the transaction is considered to be the sale of tangible personal property. Examples include:

- Repairs if the retail value of the parts and materials is more than 10% of the total charge
- Engineering and maintenance contracts if those services are a mandatory component of the sales transaction
- Sales of printed matter

SPECIAL ALLOCATION PROCEDURES

Leases and Rentals

The tax on long-term lease payments is normally distributed through the countywide use tax allocation pools. The exception is leases for passenger vehicles which are allocated back to the jurisdiction where the vehicle was purchased and the lease negotiated. Short term rentals (30 days or less) of cars, tools, equipment, etc. are allocated to the jurisdiction where the merchandise was rented.



SPECIAL ALLOCATION PROCEDURES (CONTINUED)

Out-of-State Purchases

The use tax on goods located outside California for transactions exceeding \$500,000 in value should be allocated to the jurisdiction of first functional use. The tax on out-of-state transactions under \$500,000 is allocated via the countywide allocation pools. Merchandise that is shipped “FOB Destination” (title passes when the customer receives the goods at a location inside California) is subject to sales tax, not use tax. If the order is placed to an out-of-state order desk or call center but the retailer holds the inventory in California, the jurisdiction from where the in-state merchandise is shipped receives the tax allocation.

If an order is placed to an out-of-state order desk or sales office but the merchandise is shipped from a stock of goods in California that is owned or controlled by the seller, the warehouse becomes the place of sale.

Food to Go

Prepared meals to go are generally taxable but items sold at coffee, juice, yogurt and ice cream stores are not normally considered prepared meals and are not taxable, unless served in combination with a prepared hot food. However, exempt items that are combined with non-exempt items and priced as a combination package are taxable.

Jet Fuel Sales

The sales tax on jet fuel is generally allocated to the jurisdiction where the fuel is pumped into the aircraft.

Construction Contracts of \$5 Million or More

Generally, construction contractors are required to report the local use tax on materials consumed and the local sales tax on fixtures furnished and installed. The amount is reported using the Schedule B Form which contains a separate line for each county throughout California. The taxpayer enters the local tax amount attributable to each construction project on the corresponding county line according to the location of the job site. This results in the indirect distribution of the tax through the countywide pools. In December of 1994, State Board of Equalization (now CDTFA) adopted a resolution allowing for the direct distribution of the local sales and use tax to the local jurisdiction of the construction site for certain qualifying contracts. Under the resolution, a construction contractor who enters into a construction contract equal to or greater than \$5 million may elect to obtain a sub-permit for the jobsite. To receive the maximum benefit, the permit should be taken out before construction begins and participation is limited to the installing contractor or subcontractor. To qualify, the participating contractor must already hold a valid seller’s permit, be currently registered with the CDTFA as a contractor and have an individual contract over \$5 million.

SALES TAX EXEMPTIONS

When sales tax was first imposed in 1933, the only exemptions to the tax were gold bullion, utility services and goods sold to the federal government. Since then, the state has continued to expand the number of exemptions while raising the overall rate to offset the revenue losses. Approximately 70% of the \$11 billion in lost revenues is related to food sold for home consumption and prescription medicine and devices.

A complete list of exemptions is provided in California Department of Tax and Fee Administration’s Publication 61 and can be downloaded at: <http://www.cdtfa.ca.gov/formspubs/pub61.pdf>

- Animals sold for human consumption
- Artworks purchased for a museum
- Catalogs, flyers and junk mailers
- Bulk coin and medal collections
- Common carrier aircraft and supplies
- Containers and labels to be resold as part of the product
- Custom computer programs
- Goods made by charitable organizations
- Wine-making industry
- Food sold for home preparation and consumption
- Fuel for propeller driven aircraft (jet fuel is taxable)
- Gas, electricity and water
- Motion picture products
- Occasional sales other than vessels, aircraft and vehicles
- Prescription medicine and devices
- Periodicals sold by subscription
- Seeds, plants, fertilizer and feed used to raise food for human consumption
- Telegraph and telephone lines
- Trucks, trailers, railroad cards and watercraft used for interstate commerce
- Sales to the federal government



DISTRIBUTION OF LOCAL SALES AND USE TAX FROM ONLINE RETAIL PURCHASES

“Omni-Channel Retailing” refers to a multichannel sales approach to provide customers with an integrated and seamless shopping experience whether purchases are made online from a desktop or mobile device, by telephone or in a store. The number of options that consumers now have in how they select, pay and take possession of merchandise has created new challenges in properly allocating local sales and/or use tax.

The place of sales and use tax for purposes of Bradley-Burns Uniform Local Sales and Use Tax is outlined in CDTFA Regulations 1802 and 1699.

The following describes the various scenarios that determine where the local tax from online sales is allocated.



GUIDELINES FOR ALLOCATION OF LOCAL TAX – ONLINE AND IN-STORE

Place of Sale	Location of Goods at the Time of Sale	How Customer Receives Goods	Allocation of Tax
Online – Order is placed or downloaded outside California	California Fulfillment Center	Shipped to Customer from California Location	Local tax is allocated to the jurisdiction in which the fulfillment center is located
Online – Order is placed or downloaded in California	California Fulfillment Center	Shipped to Customer from California Location	Per CDTFA Regulation 1802, local tax is allocated to the jurisdiction where the order is placed
Online	Out of State Fulfillment Center	Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	Out of State Fulfillment Center	Picked Up In-Store (Click & Collect)	Local tax is allocated to the countywide pool based on point of delivery
Online	California Fulfillment Center Owned and Operated by Third Party Vendor	Drop-Shipped to California Customer	Local tax is allocated to the countywide pool based on point of delivery
Online	In-Store (Goods withdrawn from store inventory)	Shipped to California Customer	Local Tax is allocated to the jurisdiction where the store is located
Online	In-Store (Goods withdrawn from store inventory)	Picked Up In-Store (Click & Collect)	Local Tax is allocated to the jurisdiction where the store is located
In-Store	In-Store (Goods withdrawn from store inventory)	Over the Counter	Local Tax is allocated to the jurisdiction where the store is located

ALLOCATION OF USE TAX

GENERAL BACKGROUND

Use tax was first imposed in 1935 to protect California retailers by discouraging buying from out-of-state to avoid the state sales tax. Accordingly, consumers who purchase tangible personal property from out-of-state are liable for use tax at a rate equivalent to their local sales tax including transactions taxes if applicable. Use tax is also imposed on the storage, use, lease or other consumption of tangible personal property any time a sales tax has not been paid by the retailer.

ALLOCATION BY STATE AND COUNTY POOLS

Use tax is the responsibility of the buyer rather than the seller and does not involve a California “place of sale.” Therefore, a pooling system was devised to distribute the local share. It is also used to distribute any sales tax that cannot be easily tied to a permanent place of sale. Under the pool concept, the tax is first coded to the county of use and then distributed to each jurisdiction in that county on a pro rata share of taxable sales each quarter. An agency generating 8% of the county’s total taxable sales receives 8% of the pool. If the county of use cannot be identified, the allocation goes to the state pool for pro rata distribution on a statewide basis.

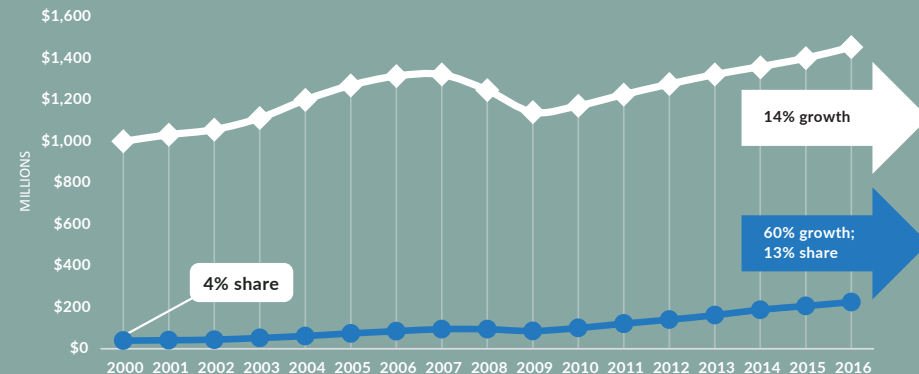
Approximately 12%-15% of a local jurisdiction’s total sales and use tax revenues are derived from their share of the countywide pools. Major contributions to the countywide pool include:

- Private party sales of vehicles, mobile homes, vessels and aircraft registered at DMV.
- Online and other purchases where the merchandise is shipped to the customer from out of state.
- Sales that include installation of the goods at the customer’s site.
- Long term leases of equipment and other tangible personal property.
- Use tax on purchases or inventory or tools and equipment fabricated and consumed or used at facilities not registered as sales locations.
- Catering trucks, itinerant vendors, vending machine operators and other permit holders who are unable to readily tie transactions to specific jurisdictions.

STATE OF CALIFORNIA

Brick & Mortar vs. Online Sales of General Consumer Goods

Local 1% Sales Tax by Calendar Year



ALLOCATION BASED ON PLACE OF USE

A number of changes have been implemented since 1995 that allow some of the use tax revenue previously shared through the pool to be directly allocated to the jurisdiction of use. The changes are as follows.

Construction Projects

Generally, contractors or subcontractors who make improvements to real property and make sales of fixtures are required to hold a seller's permit. Local tax generated by the sale or use of tangible personal property is allocated to the countywide use tax pool based on the location of the job site. Contractors often elect to pay tax at the time they purchase the material to avoid obtaining a seller's permit and filing quarterly returns. Contractors who issue bids on a "lump sum" basis only (separate amounts not stated for labor and materials) cannot hold a permit and there will be no local tax allocation. (CPPM, Chapter 2, 260.020)

Contractors and sub-contractors who have an individual contract over \$5 million and meet certain criteria may elect to obtain a construction site sub-permit which allows for the allocation of local tax directly to the jurisdiction where the jobsite is located. For more information, please see "Special Allocation Procedures" on page 8.



Vehicle Leases

Effective January 1, 1996, the local portion of use tax on leases of new cars and light trucks purchased from California dealers is allocated directly to the jurisdiction of the new car dealer where the leasing company acquired the vehicle. It is the leasing institution and not the auto dealer that collects and remits the use tax. (Revenue and Taxation Code Section 7205.1)

Auctions Events of \$500,000 or More

Auctions held away from an auctioneer's place of business that result in taxable sales of \$500,000 or more in the aggregate for the auction event are now to be reported directly to the locality where the auction is held. (CDTFA Regulation 1802 (a) (4))

Use Tax Purchases Exceeding \$500,000

Since July 1, 1996, taxpayers that are required to be registered with the CDTFA and who make sales or purchases of \$500,000 or more that are delivered from out of state are required to report the local 1% tax to the jurisdiction of first functional use. The rule does not apply to vendors who are not required to register with the CDTFA but do so voluntarily.

Direct Payment Permits

Effective January 1, 1998, cities and counties are authorized to take out a direct payment permit and issue a use tax exemption certificate to out-of-state vendors and lessors (except lessors of new vehicles). The certificate exempts the vendor or lessor from collecting use tax and allows the purchasing entity to "self-assess" and pay the use tax on its quarterly tax return. The local portion of the tax (1%) is then allocated to the location of the jurisdiction registered on the direct payment permit.

Additionally, private sector taxpayers have the option of applying for a direct payment permit if they make \$500,000 or more in cumulative leases or purchases subject to use tax during the 12 months preceding the application. In addition to directing 100% of the local use tax to the local jurisdiction, the vendor exemption and self-payment procedure simplifies the tax accrual and payment process for some taxpayers. (Revenue and Taxation Code 7051.3, CDTFA Regulation 1699.6)

TRANSACTIONS TAX

As of October 1, 2018, there were 270 transactions and use tax districts in California. Of these, 53 are countywide and 218 are in cities.

The numbers change frequently due to newly approved or recently expired districts. New transactions taxes are being added with almost every election cycle. The taxes are used to finance a variety of needs including public safety services, local hospitals, road repairs and capital projects. More than 90% of the state's population currently reside in one or more transactions and use tax districts.

As with other California taxes, a transactions and use tax district must obtain a majority vote for general purposes and two-thirds vote if for specific purposes. However, a 1988 court decision found a Santa Clara County District that specified that the revenues could be spent for general county purposes required only a majority vote despite the passage of a related advisory measure stating the voters' intent that the revenues be spent on specific projects. (Coleman vs. County of Santa Clara (64 Cal. App 4th 662))

The maximum transactions and use tax rate of 2% does not account for authorizations by the state legislature for individual counties or cities to put new district tax measures before their voters. Therefore, total tax rate maximums exceed 9.25% in portions of Alameda, Contra Costa, Los Angeles, Monterey, San Mateo, Santa Clara and Sonoma Counties. The pertinent provisions of the California Revenue and Taxation Code are Sections 7251.1, 7285.9 – 7285.92, 7285 – 7285.5 and 7292.

For a current listing of transactions tax rates, please visit:
<http://www.cdtfa/formspub/cdtfa95.pdf>

HOW THE TAX IS DISTRIBUTED

With the exception of certain goods sold to common carriers, the transactions and use tax is imposed on the same goods and merchandise as the local sales and use tax. However, where the Bradley-Burns Sales and Use Tax is generally allocated to the jurisdiction where the sale is negotiated or the order is taken, the transactions and use tax is allocated to the district where the goods are delivered or placed into use.

IMPLEMENTATION ISSUES AND RESOURCES

Cities and counties are required to contract with the California Department of Tax and Fee Administration for administration of the ordinance imposing the tax. There are two contracts. One is for setting up the tax; the second is for ongoing administration. Additionally, as the transactions and use tax is separate and distinct from the local sales and use tax, a separate Resolution of Confidentiality for access to the allocation data is required.

Agencies contemplating a transactions and use tax should begin by contacting the California Department of Tax and Fee Administration Local Revenue Allocation Section. A team has been established to assist cities with the preparatory functions for placing a proposal on the ballot including proper wording of the ordinance and subsequent contracts. The specific advisor is currently Donna Puchalski. She can be reached at 916.324.1371. In addition, Publication 28, Tax Information for City and County Officials and Publication 44, Tax Tips for District Taxes, contain related information and can be downloaded from the California Department of Tax and Fee Administration's website at www.cdtfa.ca.gov.

Finally, California Constitution Article XIII C should be reviewed with Agency Counsel to determine whether or not a specific tax proposal being contemplated falls under the requirements for consolidation with a regularly scheduled general election for members of the governing body.

CDTFA FEES AND CHARGES

ADMINISTRATIVE AND DISTRIBUTION

The CDTFA charges local governments for their share of the administration and distribution of local taxes. For Bradley-Burns, the local governments' collective share of direct, shared and central overhead costs are calculated annually and charged to each jurisdiction based on their ratio of sales tax generation. The estimated fees are deducted from the quarterly tax distributions with a year-end true-up to match local costs. In 2018, the quarterly fees have been averaging 1.1891%.

The costs of local imposed transactions tax levies are also charged quarterly but calculated individually and based on the individual jurisdictions actual audit activity and state workload factors. The fees are capped at 5% of gross collections for tax rates of less than 0.25%, 3% for tax rates of less than 0.5% and 1.5% for tax rates of 0.5% or more.

PENALTIES

For late returns or late payments, there is a penalty of 10% of the total amount due.

INTEREST

Late payments are subject to interest. Interest is due for each month or fraction of a month the tax payment is overdue.

COLLECTION COST RECOVERY FEE

The CRF (Collection Cost Recovery Fee) applies to each final billing greater than \$250 that remains unpaid more than 90 days after the date a demand notice is issued. The CRF applies only after the CDTFA has mailed a demand notice to that person requiring payment.

NEGLIGENCE OR FRAUD

An additional 25% penalty will apply (in addition to the 10%) if the CDTFA finds that the tax was not reported due to fraud or intent to evade the laws.

NOTICE OF DETERMINATION

If CDTFA staff notes an additional amount is due, the taxpayer will receive a Notice of Determination. The notice will include interest, penalty and CRF (if applicable). An additional 10% penalty will apply to the amount unless the taxpayer files a timely appeal.

LATE TAX PREPAYMENTS

A 6% penalty will apply if a prepayment is made after the prepayment due date but before the due date for the quarterly return. The penalty increases to 10% if it is determined that the prepayment was late due to neglect or willful disregard. Interest does not apply to the prepayment as long as the tax is paid by the due date for the quarter return.



FAILURE TO TIMELY PAY SALES TAX REIMBURSEMENT OR USE TAX COLLECTED FROM CUSTOMERS

A 40% penalty may be applied if a taxpayer collects sales and use tax but fails to pay it to the CDTFA.

IMPROPER USE OF A RESALE CERTIFICATE

If there is improper use of a resale certificate, the transaction may be subject to interest, fines between \$1,000 and \$5,000 and a penalty of \$500 per transaction or 10% of the tax due, whichever is higher.

LOCAL JURISDICTION SHARE

The local jurisdiction receives their pro rata share of the interest and penalties after they have been collected by the CDTFA.

RELIEF FROM PENALTIES, INTEREST AND CRF

The CDTFA may grant relief from interest, penalties and CRF under limited circumstances that include:

- Reliance on erroneous written advice from CDTFA staff
- Late returns/payments as the result of a disaster or public calamity
- Extensions of time
- Circumstances beyond the taxpayer's control

CDTFA FEES AND CHARGES

All cities and counties received notification from the California Department of Tax and Fee Administration (CDTFA) regarding their new Centralized Revenue Opportunity System (CROS), updated allocation methodology and new payment calendar.

As part of this change, CDTFA will be combining the (previous) 3rd monthly advance with the clean-up payment so agencies will receive their clean-up payments one month earlier.

ALLOCATION CALENDAR

Below is the anticipated new allocation schedule:

Sales Period	1 st Quarter			2 nd Quarter			3 rd Quarter			4 th Quarter		
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Advance/Clean-Up Payments	27%	46%	27%	27%	46%	27%	27%	46%	27%	27%	46%	27%
Clean-up Dates (Approx.)		2/22			5/23			8/24			11/28	
Remittance Dates (Approx.)	1/24	2/24	3/24	4/24	5/24	6/24	7/24	8/24	9/24	10/24	11/28	12/27



CONFIDENTIALITY STANDARDS

FOLLOWING THE RULES

Sales tax data is required to be kept confidential by Revenue and Taxation Code Section 7056. Thus, it is unlawful for any person who obtains access to sales and use tax records, to make known in any manner the information disclosed on any [tax] return, including any abstract thereof. Accordingly, a local agency may not disclose amounts of tax paid, whether tax amounts are up or down from a prior period, or any other information that would reveal the business affairs or operations of a business.

Though confidential by law, sales and use tax information can be used by local government officials if the use is “related to collection of local sales and use taxes” or “related to other governmental functions of the county, city and county, or city.” Permit administrators, finance or revenue managers, economic development staff, community development personnel, and business license officials can benefit from access to local sales and use tax allocation information. However, only those positions or individuals authorized by resolution of the governing body (City Council or Board of Supervisors) may have access to confidential data and each person so authorized is required to abide by the provisions of Revenue and Taxation Code Section 7056.

COMBINED INFORMATION MAY BE DISCLOSED

Sales tax payments for groups of businesses may be revealed to the general public if the so-called “gang of four” and “80%” rules are followed.

This rule allows combined data for four or more businesses to be released as long as no single member of the group is the source of a disproportionate percentage, defined herein as 80%, of the group total. The “group” may be defined as businesses in the same shopping center, a specific business type such as new auto sellers, or businesses sharing the same major business group.

- The “gang of four” rule must be four separate businesses with individual sellers’ permit numbers. For example, if the group includes four outlets and two of the outlets are sub-outlets under the same sellers’ permit number then those two outlets are counted as one toward the overall “gang of four” rule.
- A business with a current allocation that has since closed its sellers’ permit cannot be counted toward the “gang of four” rule.
- A new business with an active sellers’ permit that has yet to commence reporting sales cannot be counted toward the “gang of four” rule.
- If the total amount for a particular group is negative that group cannot be disclosed.

Pursuant to an Executive Order signed by Governor Wilson in April 1994, it is also possible to publish a list of the top sales tax generators if all of the following conditions are met:

- At least 25 retailers are included.
- Businesses are presented in random or alphabetical order. Businesses are not ranked by amount paid.
- Sales or use tax amounts are omitted.

SALES TAX PARTICIPATION AGREEMENTS

SHARING BY LOCAL GOVERNMENTS

Article VIII, Section 29 of the state constitution authorizes local agencies to share the apportionment of sales and use tax with each other if the governing bodies of the participating agencies approve the agreement by a two-thirds vote. Additionally, some cities enter into tax sharing agreements with their county by reducing their portion of the 1.0% levy so that the difference defaults to the county.

REPORTING REQUIREMENT

Government Code Section 53083 requires, among other provisions, that cities or counties granting economic development subsidies of \$100,000 or more provide advance public notification and hold a public hearing. Specific information regarding the subsidy, as detailed in the code, must also be provided in writing and posted on the agency’s website.

Consideration of tax sharing agreements that will result in a reduction in the amount of revenue received by another local agency must be preceded by notification by certified mail to the losing agency at least 60 days prior to approval by the governing body and posting of the agreement on the internet website of the agency considering the agreement at least 30 days prior to approval. (Gov. Code Section 53084.5)

The Government Accounting Standards Board has also issued GASB Rule 77 that requires governments to disclose specified information on sales tax sharing agreements within their financial statements.

LEGAL LIMITATIONS

Big Box Retailers and Auto Dealers

Government Code Section 53084 prohibits a local agency from providing any type of financial assistance to automobile dealers or big box retailers that are relocating from one jurisdiction to another within the same market area (40 drive miles for automobile dealers and 25 drive miles for big box retailers). This law encompasses traditional retail stores larger than 75,000 square feet and also equivalent-sized warehouse fulfillment centers that sell merchandise over the internet or telephone.

Poaching

Effective January 1, 2016, Government Code Section 53084.5 prohibits agreements that result in a reduction in the amount of revenue that, absent the agreement, would have been received by another local agency in which the subsidized retailer continues to maintain a physical presence.

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