CITY OF MARTINEZ **CITY COUNCIL AGENDA**
May 20, 2015

TO: Mayor and City Council

FROM: Rob Braulik, City Manager

SUBJECT: Support Letter for SB 533 (Pan) Cities and Counties, sales and use tax agreements

DATE: May 5, 2015

RECOMMENDATION:

Support letter for SB 533 (Pan) Cities and Counties, sales and use tax agreements.

BACKGROUND:

SB 533 would close existing loopholes in statute prohibiting the consolidation of retail locations that would result in a substantial loss of sales and use tax for a local agency by restricting this activity if the retailer maintains a previously existing location.

Current law does not prohibit a retailer from expanding its operations into another jurisdiction if the retailer is conducting a comparable operation within both local agencies' jurisdictions, even if there is a substantial revenue loss to the original jurisdiction. This bill would also provide for notice provisions to the agency where the retailer is seeking to move from.

FISCAL IMPACT:

The fiscal impact is unknown at this time. However, based on the City's experience history with one retailer who relocated to another agency that entered into a sales tax sharing agreement, the net fiscal impact was substantial. This bill would impose requirements that would hopefully stop the use of such agreements in the future.

ACTION:

Motion to direct staff to send letter of support for SB 533 (Pan) Cities and Counties, sales and use tax agreements.

Attachments:

- Actual Bill SB 533
- Bill Summary, Status and History
- League of Cities Support Letter
- Support Letter

SENATE BILL No. 533

Introduced by Senator Pan

February 26, 2015

An act to repeal and add Section 53084.5 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 533, as introduced, Pan. Cities and counties: sales and use tax agreements.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. That law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified.

Existing law prohibits a local agency, as defined to mean all cities and counties, from entering into any form of agreement with any other person that would involve the payment, transfer, diversion, or rebate of any amount of Bradley-Burns local tax proceeds for any purpose if the agreement results in a reduction in the amount of revenue that is received by another local agency from a retailer that is located within the territorial jurisdiction of that other local agency, and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions, including an exception for an agreement to pay or rebate any Bradley-Burns local tax revenue relating to a buying company, as defined.

This bill would repeal that prohibition and instead prohibit, on or after January 1, 2016, a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment,

transfer, diversion, or rebate of Bradley-Burns local tax proceeds to any person, as defined, for any purpose, if the agreement results in a reduction in the amount of Bradley-Burns tax proceeds that, in the absence of the agreement, would be received by another local agency and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions. This bill would also impose specified notification and reporting requirements on a local agency entering into an agreement that results in a reduction of the amount of Bradley-Burns tax proceeds, that in the absence of the agreement, would be received by another local agency, prior to the ratification of that agreement. This bill would also require any local agency to post such an agreement on its Internet Web site the local agency has entered into, including any agreements entered into prior to the effective date of this bill that are still in effect. By imposing these notification and reporting requirements on a local agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 53084.5 of the Government Code is repealed.

~~53084.5. (a) On or after the date the act adding this section takes effect, 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 tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) to any person for any purpose when both of the following apply:~~

~~(1) The agreement results in a reduction in the amount of revenue that is received by another local agency from a retailer~~

~~that is located within the territorial jurisdiction of that other local agency from the tax proceeds collected under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code). This subdivision shall not apply to a reduction in the use tax proceeds that are distributed to that other local agency through one or more countywide pools.~~

~~(2) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency. This subdivision shall not apply if the retailer has expanded its operations into another jurisdiction with the result that the retailer is conducting a comparable operation within the jurisdiction of both local agencies.~~

~~(b) For the purposes of this section, the following definitions have the following meanings:~~

~~(1) "Local agency" means a chartered or general law city, a chartered or general law county, or a city and county.~~

~~(2) "Retailer" means a retailer as defined by Section 6015 of the Revenue and Taxation Code.~~

~~(3) "Physical presence" means the lease or ownership of any real property for the purpose of carrying on business operations.~~

~~(c) This section shall not apply to local tax proceeds provided by a local agency to a retailer if the funds 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.~~

~~(d) This section shall not apply to an agreement to pay or rebate any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) relating to a buying company. "Buying company" means, and is limited to, a legal entity that is separate from another legal entity that owns, controls, or is otherwise related to, the buying company and which has been created for the purpose of performing administrative functions, including acquiring goods and services for the other entity, as defined by the State Board of Equalization, and meets requirements of a buying company under Sections 6066 to 6075, inclusive, of the Revenue and Taxation Code, and the regulations adopted pursuant to those sections.~~

~~(e) This section shall not apply to any agreement by a local agency to pay or rebate any use tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) relating to a use tax direct payment permit issued under Section 7051.3 of the Revenue and Taxation Code.~~

~~(f) Nothing in this section shall be interpreted to limit the ability of a local agency to contract with or otherwise enter into an agreement pursuant to subdivision (b) of Section 7056 of the Revenue and Taxation Code.~~

SEC. 2. Section 53084.5 is added to the Government Code, to read:

53084.5. (a) On or after January 1, 2016, 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 tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) to any person for any purpose when both of the following apply:

(1) The agreement results in a reduction in the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency.

(2) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

(b) (1) A local agency entering into an agreement that results in a reduction of the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency shall post the proposed agreement on its Internet Web site for at least 30 days prior to ratification or approval of that agreement by its governing body.

(2) A local agency entering into an agreement that results in a reduction of the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency shall notify the other local agency by certified mail addressed to the attention of the chief executive of that other local agency at least 60 days

prior to ratification or approval of that agreement by its governing body.

(3) A local agency shall post any agreement on its Internet Web site it has entered into that results in a reduction of the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency, including any agreements entered into prior to the effective date of this section that are still in effect.

(c) For the purposes of this section, the following definitions have the following meanings:

(1) "Local agency" means a chartered or general law city, a chartered or general law county, or a city and county, of this state.

(2) "Person" means a person as defined in Section 6005 of the Revenue and Taxation Code.

(3) "Physical presence" means the lease or ownership of any real property for the purpose of carrying on business operations.

(4) "Retailer" means a retailer as defined by Section 6015 of the Revenue and Taxation Code.

(d) This section shall not apply to any agreement by a local agency to pay or rebate any use tax revenue resulting from the imposition of a use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law relating to a use tax direct payment permit issued under Section 7051.3 of the Revenue and Taxation Code.

(e) Nothing in this section shall be interpreted to limit the ability of a local agency to contract with or otherwise enter into an agreement pursuant to subdivision (b) of Section 7056 of the Revenue and Taxation Code.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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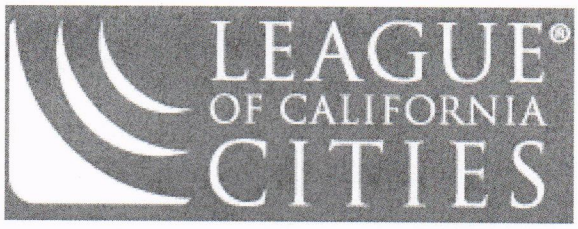

Search Results
Wednesday, April 29, 2015

SB 533

(Pan D) Cities and counties: sales and use tax agreements. (Introduced: 2/26/2015)
Status: 4/24/2015-Set for hearing May 4.
Location: 4/22/2015-S. APPR.

Desk	Policy	**Fiscal**	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

Calendar: 5/4/2015 11 a.m. - John L. Burton Hearing Room (4203)
SENATE APPROPRIATIONS, LARA, Chair

Summary: The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. That law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified. This bill would repeal that prohibition and instead prohibit, on or after January 1, 2016, a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of Bradley-Burns local tax proceeds to any person, as defined, for any purpose, if the agreement results in a reduction in the amount of Bradley-Burns tax proceeds that, in the absence of the agreement, would be received by another local agency and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions. This bill would also impose specified notification and reporting requirements on a local agency entering into an agreement that results in a reduction of the amount of Bradley-Burns tax proceeds, that in the absence of the agreement, would be received by another local agency, prior to the ratification of that agreement. This bill would also require any local agency to post such an agreement on its Internet Web site the local agency has entered into, including any agreements entered into prior to the effective date of this bill that are still in effect. By imposing these notification and reporting requirements on a local agency, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

Policy Committee (primary)	**Primary Lobbyist**	**2nd Lobbyist**	
Revenue_and_Taxation	Carrigg, Dan	Tim Cromartie	
League Position	**Position Taken**	**Policy Committee (secondary)**	**Policy Analyst**
Watch			

Total Measures: 1
Total Tracking Forms: 1

4/29/2015 9:39:38 AM

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May 4, 2015

Honorable Richard Pan
State Senate
State Capitol, Room 4070
Sacramento, CA 95814

RE: **SB 533 (Pan) Sales Tax Shifting Agreements**
Notice of Support *(As Introduced, Feb. 26, 2015)*

Dear Senator Pan,

On behalf of the League of California Cities, I am pleased to convey our support for your SB 533.

The League is a staunch defender of local authority including preserving local flexibility to engage in economic development efforts to retain and attract businesses into their communities. We have made exceptions, however, to this policy when rebate agreements are designed to shift the situs of sales transactions –not the physical businesses--resulting in the transfer of sales tax revenue from one community to another, often accompanied by a significant rebate to arranging consultants and participating companies.

For these reasons, in 2009, the League supported SB 27 (Hancock), which enacted the law amended by this measure. While SB 27 has been helpful in curbing such practices, the law contains several exceptions which may still permit creative individuals to enact such agreements. SB 533 would tighten the law by removing a number of these exceptions and requiring more public transparency on existing and future agreements which result in the loss of sales taxes by other local agencies.

For these reasons the League Supports SB 533. If you have any questions, please call me at (916) 658-8222.

Sincerely,

Daniel Carrigg
Legislative Director

CC: All Senators

City of Martinez
525 Henrietta Street, Martinez, CA 94553-2394
(925) 372-3505
FAX (925) 229-5012

May 20, 2015

Honorable Richard Pan
Member, California State Senate
State Capitol, Room 4070
Sacramento, CA 95814

Via FAX: (916) 651-4906

Subject: **SB 533 (Pan), Cities and Counties, sales and use tax agreements**
Letter of Support

Dear Senator Pan:

The City of Martinez supports SB 533, which would close existing loopholes in statute prohibiting the consolidation of retail locations that would result in a substantial loss of sales and use tax for a local agency by restricting this activity if the retailer maintains a previously existing location.

Current law does not prohibit a retailer from expanding its operations into another jurisdiction if the retailer is conducting a comparable operation within both local agencies' jurisdictions, even if there is a substantial revenue loss to the original jurisdiction.

The City of Martinez has experienced the substantial loss of local sales tax dollars to another agency nearby wherein the other agency entered into an agreement to rebate back to the retailer sales tax dollars. This resulted in this firm relocating out of the City. This relocation has placed significant financial burdens on our community to provide basic municipal services.

Therefore, the City of Martinez supports SB533.

Sincerely,

Rob Schroder, Mayor
City of Martinez

c: State Senator Lois Wolk
Assembly Member Susan Bonilla
League of California Cities East Bay Regional Public Affairs Manager Samantha Caygill and
Meg Desmond, Policy Analyst, League of California Cities