



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

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GovernorAMY TONG
Secretary, Government Operations AgencyNICOLAS MADUROS
Director

November 26, 2024

Dear Interested Party:

Enclosed is the Discussion Paper on whether the California Department of Tax and Fee Administration (CDTFA) should propose to adopt an emergency regulation to address the local tax revenue sharing agreement reporting and publication requirements and clarify the imposition of the penalty provided by Revenue and Taxation Code section 7213, as added by Assembly Bill No. 2854 through the rulemaking process. We would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

December 16, 2024
10:00 a.m.
(Microsoft Teams)

You may join us on your computer or mobile app through [Microsoft Teams](#) or by calling 1-916-535-0987 and then entering the phone conference identification number 164 701 844#. You are also welcome to submit your written suggestions or comments, including any proposed regulatory language, to me at the address or fax number in this letterhead or via email at BTFD-BTC.InformationRequests@cdtfa.ca.gov by December 23, 2024. Copies of the materials you submit may be provided to other interested parties; therefore, please ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others who may be interested in participating in the meeting or presenting their suggestions or comments.

If you are interested in other Business Taxes Committee topics, refer to the CDTFA webpage at (<http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>) for copies of discussion papers and calendars of current and prior issues.

Thank you for your consideration. We look forward to your participation. Should you have any questions, please contact Business Taxes Committee team member Sarah Smith at 1-916-309-5292.

Sincerely,

Aimee Olhiser, Chief
Tax Policy Bureau
Business Tax and Fee Division

AO:sps

Enclosures

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Tax Revenue Sharing Agreement Reporting and Penalty

Issue

Whether the California Department of Tax and Fee Administration (Department) should propose adopting an emergency regulation to address the local tax revenue sharing agreement reporting and publication requirements and clarify the imposition of the penalty provided by Revenue and Taxation (RTC) section 7213, as added by Assembly Bill No. (AB) 2854 (Stats. 2024, ch. 842), effective January 1, 2025.

Background

The Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns) (commencing with RTC section 7200) authorizes counties and cities to impose local sales and use taxes, with provisions generally in conformity with the Sales and Use Tax Law. Bradley-Burns local taxes (local taxes) are imposed in every city, county, and city and county in California at a uniform total combined rate of 1.25 percent. When state sales tax applies to a transaction, the 1.25 percent local sales tax also applies. When state use tax applies to a transaction, then the local use tax also applies (Regulation 1803, Application of Tax). Local taxes are separate and distinct from district taxes imposed in accordance with the Transactions and Use Tax Law (commencing with RTC section 7251).

Government Code section 53084.5

Beginning January 1, 2016, Government Code (GC) section 53084.5 prohibits a local agency from entering 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 local taxes 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 Bradley-Burns that, in 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.

Additionally, GC section 53084.5 requires a local agency that entered into such agreements to post the approved agreements on its website, including any agreements approved prior to January 1, 2016, that are still in effect on and after that date. (GC, § 53084.5, subd. (b)(3).) GC section 53084.5 also provides that “local agency” means a chartered or general law city, a chartered or general law county, or a city and county, of this state. (GC, § 53084.5, subd. (c).)

RTC section 7213 (AB 2854)

On September 28, 2024, AB 2854 was chaptered. This bill added RTC section 7213 to impose new reporting and publication requirements on local agencies as defined in GC section 53084.5,

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regarding tax revenue sharing agreements and monetary penalties for failure to meet those requirements, effective January 1, 2025.

RTC section 7213 provides that “rebated sales and use tax revenues” means any direct or indirect payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a local tax to any person pursuant to an agreement. (RTC, § 7213, subd. (a)(2).) Subdivision (d) of RTC section 7012 provides that on or before April 30 of each year, for each agreement that resulted in rebated sales and use tax revenue during the immediately preceding fiscal year, a local agency shall report to the Department, in a form and manner prescribed by the Department, the following information:

1. The name or names of any parties to the agreement.
2. The total dollar amount of rebated sales and use tax revenues received by each party to the agreement on or after the date of the execution of the agreement through and including June 30 of the fiscal year immediately preceding the date of the report.
3. The total dollar amount of rebated sales and use tax revenues received by each party to the agreement during the fiscal year immediately preceding the date of the report.
4. The date on which the agreement was originally executed, and the date on which the agreement terminated or will terminate, absent any renewal.
5. The percentage of a retailer’s sales and use taxes, if any, used to calculate or otherwise determine the rebated sales and use tax revenues received by each party to the agreement.
6. The percentage of a retailer’s sales and use taxes, if any, used to calculate or otherwise determine the rebated sales and use tax revenues received by any other person that is not a party to the agreement.

Subdivision (b) of RTC section 7012 provides that a local agency shall publish on its internet website, on or before April 30 of each year, the information submitted to the Department pursuant to subdivision (d). It provides that a hyperlink to an internet web page containing the information submitted to the Department pursuant to subdivision (d) shall be present and visible on the home page of the local agency’s internet website at all times. It also provides that if a local agency maintains a web page containing information about the local agency’s economic development subsidies, including, but not limited to, the information required pursuant to GC sections 53083 and 53083.1, the local agency may include the information submitted to the Department pursuant to subdivision (d) on that internet web page.

Subdivision (c) of RTC section 7213 provides that a local agency that has not directly or indirectly paid, transferred, diverted, or rebated any sales and use tax revenues pursuant to an agreement in the immediately preceding fiscal year shall, by April 30, report this fact to the Department in a form and manner prescribed by the Department and shall be exempt from the posting requirements outlined in subdivision (b) discussed above.

Subdivision (e) of RTC section 7213 provides that if a local agency fails to timely provide the information required pursuant to subdivisions (c) or (d), or fails to publish information on its

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website pursuant to subdivision (b), the Department shall notify the local agency by certified mail that it has 45 days from the mailing of the notice to provide or publish the required information or submit a statement to the Department, in the form and manner prescribed by the Department, explaining why it is unable to provide or publish the required information within the 45-day period. (RTC, § 7213, subd. (e)(1)(A)(i).) If a local agency provides such a statement, the Department may extend the 45-day period to provide or publish the required information by 30 days if the local agency demonstrates that the failure to comply timely with the applicable requirement:

- Was due to reasonable cause and circumstances beyond the local agency's control,
- Occurred notwithstanding the exercise of ordinary care, and
- Occurred in the absence of willful neglect. (RTC, § 7213, subd. (e)(1)(A)(ii)(I).)

The Department shall not grant an extension for a local agency based on the local agency's claim that the information is confidential. (RTC, § 7213, subd. (e)(1)(A)(ii)(I).) If the Department grants an extension, the Department shall notify the local agency by certified mail that it has 30 days to provide or publish the required information commencing on the next business day following the expiration of the 45-day period discussed above. (RTC, § 7213, subd. (e)(1)(A)(ii)(II).) If the Department declines to grant an extension, the local agency shall provide or publish the required information within 10 days after the Department notifies the local agency by certified mail that it has denied the extension. (RTC, § 7213, subd. (e)(1)(A)(ii)(III).) The notice shall be addressed to the person authorized to receive confidential data at the local agency's address as it appears in the Department's records. (RTC, § 7213, subd. (e)(1)(A)(iii).) The mailing of the notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. (*Ibid.*)

Subdivision (e)(1)(B) of RTC section 7213 provides that if a local agency fails to provide or publish the specified information within the applicable period determined as discussed above, the Department may impose a penalty for each day after expiration of the applicable period the local agency fails to provide or publish the information, up to 365 days after the expiration of the applicable period, as follows:

- For days one to 180, inclusive, one thousand dollars (\$1,000) per day.
- For days 181 to 365, inclusive, four thousand dollars (\$4,000) per day.

The provisions of chapter 4 of the Fee Collections Procedures Law (FCPL) (commencing with RTC section 55121) apply with respect to the collection of the penalties imposed. (RTC, § 7213, subd. (e)(2).)

Discussion Issues

Subdivision (g) of RTC section 7213 authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section. It authorizes the

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Department, until January 1, 2026, to prescribe, adopt, and enforce emergency regulations as necessary to implement, administer, and enforce its duties under RTC section 7213. Also, April 30, 2025, is the first deadline for local agencies to comply with the reporting and publication requirements provided pursuant to RTC section 7213. Therefore, the Department is considering whether it is necessary to propose to adopt an emergency regulation to address issues with the reporting and publication requirements and clarify the imposition of the penalty prior to April 30, 2025.

We invite you to participate in a December 16, 2024, interested parties meeting to discuss the reporting, publication, statement, extension, and penalty issues discussed below. The Department welcomes your input and written comments with respect to those issues and any other issues related to RTC section 7213.

Reporting and Publication

Subdivisions (c) and (d) of RTC section 7213 require local agencies to report information to the Department in a form and manner prescribed by the Department. The Department generally receives returns and reports electronically because electronic data are generally easier to organize into databases and electronic submissions reduce opportunities for keying errors as information is inputted into our systems. Therefore, the Department is considering whether it should adopt an emergency regulation requiring local agencies to electronically complete and submit a tax revenue sharing agreement reporting form to the Department by April 30 each year to report the information required pursuant to subdivisions (c) and (d) of RTC section 7213. The Department is also considering whether it should include a question on the form requiring each local agency to confirm whether the information reported on their form has also been published on their website.

Statements and Extensions

Subdivision (e)(1)(A) of RTC section 7213 provides that if a local agency fails to provide or publish the required information timely, the Department shall notify the local agency that it has 45 days from the mailing of the notice to provide or publish the required information or submit a statement to the Department, in a form and manner prescribed by the Department, explaining why it is unable to provide or publish the required information within the 45-day period.

The Department is considering whether it should draft an emergency regulation to prescribe the form and manner in which local agencies would submit the statement referred to in subdivision (e) to the Department. The Department is considering whether the regulation should clarify that a form to make the statement will be available and that a completed statement must be emailed to the Local Revenue Branch for review by the statutory deadline. The Department is also considering whether the regulation should clarify that the Department will grant an extension when a local agency demonstrates that the failure to comply timely with the applicable requirement:

- Was due to reasonable cause and circumstances beyond the local agency's control,

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- Occurred notwithstanding the exercise of ordinary care, and
- Occurred in the absence of willful neglect.

The Department is also considering whether the regulation should include a provision stating that the Department will not grant an extension for a local agency based on their claim that the information is confidential.

Penalty

Subdivision (e)(1)(B) of RTC section 7213 provides that if a local agency fails to provide or publish the information within the applicable period determined pursuant to subdivision (e)(1)(A), the Department may impose a penalty for each day after expiration of the applicable period the local agency fails to provide or publish the information, up to 365 days after the expiration of the applicable period.

The Department is considering whether it should draft an emergency regulation to clarify that when a local agency fails to timely provide or publish the specified information within the applicable period, the penalty will be imposed starting on:

- The 46th calendar day after the certified mailing of the initial 45-day notice from the Department, when no extension was requested.
- The first calendar day after the expiration of a 30-day extension, when an extension was requested and granted.
- The 11th calendar day after the certified mailing of the denial notice from the Department, when an extension was requested and denied.

The Department will continue to impose the penalty for each day thereafter until the day the local agency submits a complete tax revenue sharing agreement reporting form to the Department and certifies on the form that the information on the form is posted on their website, but the Department will not impose the penalty for more than 365 days. The Department is also considering whether the regulation should clarify when the penalties are due and payable for purposes of collection pursuant to chapter 4 of the FCPL.

Summary

We invite you to participate in the December 16, 2024, interested parties meeting. We welcome any comments and suggestions, including proposed regulatory language from you on the key issues discussed above. We further invite you to provide your written suggestions or comments on those topics by December 23, 2024.

Prepared by the Tax Policy Bureau, Business Tax and Fee Department

Current as of November 26, 2024