

Text of Proposed Amendments to California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration – Business Taxes

Chapter 4. Sales and Use Tax

Article 19. Bradley-Burns Uniform Local Sales and Use Taxes

Section 1808. Tax Revenue Sharing Agreement Reporting and Publication

Regulation 1808. Tax Revenue Sharing Agreement Reporting and Publication.

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

- (1) “Department” means the California Department of Tax and Fee Administration.
- (2) “Fiscal year” means the 12-month period beginning on July 1 and ending on the following June 30.
- (3) “Jurisdiction code number” means a number issued by the Department to uniquely identify each local agency. The Department shall publish a list of jurisdiction code numbers on its website at www.cdtfa.ca.gov.
- (4) “Local agency” has the same meaning as defined in Government Code section 53084.5.
- (5) “Local sales and use tax revenue” means any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Revenue and Taxation Code (RTC) section 7200).
- (6) “Person” has the same meaning as defined in RTC section 6005.
- (7)(A) “Rebated sales and use tax revenues” means any direct or indirect payment, transfer, diversion, or rebate of any local sales and use tax revenue to any person pursuant to an agreement (tax revenue sharing agreement). For purpose of this subdivision,
 - (A) ~~A~~ a payment, transfer, diversion, or rebate of any money other than local sales and use tax revenue is an indirect payment, transfer, diversion, or rebate of local sales and use tax revenue if it is based on a retailer's anticipated, estimated, or actual sales or the anticipated, estimated, or actual local sales and use tax revenue from a retailer's sales.
 - (B) “Rebated sales and use tax revenues” do not include:
 - (i) The payment, transfer, diversion, or rebate of any money other than local sales and use tax revenue if it is not an indirect payment, transfer, diversion, or rebate of local sales and use tax revenue.

(ii) The apportionment of any local sales and use tax revenue between local agencies pursuant to a contract between the local agencies that is authorized by section 29 of article XIII, of the California Constitution.

(C) Examples.

(i) A local agency allows a business to periodically offset the amount due on a loan with a portion of the local sales and use tax the business's sales generate for the local agency pursuant to an agreement. Each offset is rebated sales and use tax revenue and the agreement is a tax revenue sharing agreement.

(ii) A local agency pays a consultant a contingency fee pursuant to an agreement. The contingency fee is a percentage of the local sales and use tax redistributed to the local agency because the Department granted a petition for redistribution of local sales and use tax filed by the consultant. The contingency fee is rebated sales and use tax revenue and the agreement is a tax revenue sharing agreement.

(iii) A local agency periodically pays a tax professional a percentage of the local sales and use tax generated for the local agency by the tax professional's services pursuant to an agreement. Each payment is rebated sales and use tax revenue and the agreement is a tax revenue sharing agreement.

(iv) A local agency periodically pays a tax professional an hourly rate for the tax professional's services pursuant to an agreement. The payments are not rebated sales and use tax revenue and the agreement is not a tax revenue sharing agreement.

(v) A local agency annually pays a portion of its property tax to a business pursuant to an agreement. The amount of property tax paid to the business each year is based on the amount of local sales and use tax the business's sales generate for the local agency. Each payment is rebated sales and use tax revenue and the agreement is a tax revenue sharing agreement.

(vi) The facts are the same as in example (v), except that the amount of property tax annually paid to the business is based on the amount of property tax the business generates for the local agency, not the amount of local sales and use tax the business's sales generate. The payments are not rebated sales and use tax revenue and the agreement is not a tax revenue sharing agreement.

(b) Reporting and Publication Requirements.

(1) Consistent with RTC section 7213, every local agency shall electronically complete and submit a tax revenue sharing agreement reporting form to the Department by April 30 of each year to report the tax revenue sharing agreement information required to be reported by RTC section 7213 for the immediately preceding fiscal year. For example, every local agency shall complete and submit a tax revenue sharing agreement reporting form to the Department by

April 30, ~~2027~~2025, to report the tax revenue sharing agreement information required for the fiscal year beginning on July 1, ~~2025~~2023, and ending on June 30, ~~2026~~2024.

(2) Every local agency shall report the information required by subdivision (e)(1) on their tax revenue sharing agreement reporting form.

(3) A local agency that has not rebated sales and use tax revenue pursuant to a tax revenue sharing agreement during the immediately preceding fiscal year shall report that fact on their tax revenue sharing agreement reporting form as part of the information required by subdivision (e)(1) and shall be exempt from the additional reporting and publication requirements in subdivision (b)(4).

(4) A local agency that has rebated sales and use tax revenue pursuant to a tax revenue sharing agreement during the immediately preceding fiscal year shall also report the information required by subdivision (e)(2) on their tax revenue sharing agreement reporting form and publish the information required by subdivision (e)(2) on the local agency's website by April 30 of each year in the manner required by subdivision (b) of RTC section 7213.

(5) Prior to April 30 of each year, the Department shall provide a link to the required tax revenue sharing agreement reporting form to the local agencies.

(6) Consistent with RTC section 7213, on or before June 1, 2025, and annually on each June 1 thereafter, the Department shall publish on its internet website at www.cdtfa.ca.gov the information local agencies reported to the Department for the immediately preceding fiscal year pursuant to subdivision (b)(4). The Department will update the information published on its internet website to include local agency information reported to the Department after the annual June 1 publication deadline.

(c) Extensions.

(1) If a local agency fails to report or publish the information required by subdivision (b) by April 30, 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 written statement to the Department requesting an extension and explaining why the local agency is unable to report or publish the required information within the 45-day period (extension request).

(A) An extension request must be submitted by email to the Department's Local Revenue Branch at ab2854reporting@cdtfa.ca.gov. ~~JServices@cdtfa.ca.gov~~.

(B) A local agency may use a form provided by the Department to submit an extension request.

(2) The Department shall extend the 45-day period to report or publish the required information by 30 days if:

(A) A local agency submits a timely extension request; and

(B) Pursuant to RTC section 7213, the Department determines that the statement in the extension request demonstrates that the local agency's failure to timely comply with the applicable reporting or publishing requirement within the 45-day period 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.

(3) The Department shall not grant a 30-day extension based on a local agency's claim that the information is confidential.

(4) If the Department grants a local agency an extension, the Department shall notify the local agency by certified mail that it has 30 days to report or publish the required information commencing on the next business day following the expiration of the 45-day period provided in subdivision (c)(1).

(5) If the Department does not grant a local agency an extension, the local agency shall report or publish the required information within 10 days after the Department notifies the local agency by certified mail that it has denied the extension.

(6) 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. The mailing of the notice shall be deemed complete at the time of the 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.

(d) Penalties.

(1) If a local agency fails to report or publish the required information within the applicable period determined pursuant to subdivision (c), the Department shall impose a penalty for each day after expiration of the applicable period the local agency fails to report or publish the information in accordance with subdivision (b), up to 365 days after the expiration of the applicable period, as follows:

(A) For days one to 180, inclusive, one thousand dollars (\$1,000) per day.

(B) For days 181 to 365, inclusive, four thousand dollars (\$4,000) per day.

(2) For example, the penalty will be imposed starting on:

(A) The 46th calendar day after the certified mailing of the initial 45-day notice from the Department when an extension was not timely requested.

(B) The 11th calendar day after the certified mailing of the notice from the Department when an extension was requested and denied.

(C) The first calendar day after the expiration of the local agency's 30-day extension when an extension was timely requested and granted.

(3) A penalty imposed on a local agency pursuant to this subdivision is due and payable to the Department by check 30 days after the Department notifies the local agency that the penalty was imposed.

(e) Tax Revenue Sharing Agreement Reporting Form.

(1) A local agency shall include the following information on their tax revenue sharing agreement reporting form:

(A) The local agency's jurisdiction code number;

(B) The end date of the fiscal year (e.g., June 30, 2026~~2024~~) for which information is being reported;

(C) Whether the local agency rebated sales and use tax revenue pursuant to a tax revenue sharing agreement during the fiscal year for which information is being reported; and

(D) The name, title, and email address of the person completing the form and their statement that "I hereby certify that this report has been examined by me and to the best of my knowledge and belief is a true, correct, and complete report."

(2) A local agency that rebated sales and use tax revenue pursuant to one or more tax revenue sharing agreements during the fiscal year for which information is being reported shall also include the following information on their tax revenue sharing agreement reporting form for each agreement:

(A) The name or names of any parties to the agreement;

(B) The date the agreement was executed;

(C) The date the agreement terminated or will terminate, absent any renewal;

(D) 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 for which information is being reported;

(E) The total dollar amount of rebated sales and use tax revenues received by each party to the agreement during the fiscal year for which information is being reported;

(F) 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; and

(G) 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.

(3) If a local agency reports the information about tax revenue sharing agreements required by subdivision (e)(2) on its tax revenue sharing agreement reporting form, then the local agency must also state on their tax revenue sharing agreement reporting form whether the information reported about tax revenue sharing agreements is published on the local agency's website in the manner required by subdivision (b) of RTC section 7213.

Note: Authority cited: Section 7213, Revenue and Taxation Code. Reference: Section 7213, Revenue and Taxation Code.