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August 21, 2012

Senator Michael J. Rubio
Members of the State Senate
State Capitol Building, Room 2066
Sacramento, CA 95814

Assembly Member David G. Valadao
Members of the State Assembly
State Capitol Building, Room 2174
Sacramento, CA 95814

Re: SUPPORT FOR AB 658 (Calderon) – Board of Equalization: Administration

Dear Senator Rubio, Assembly Member Valadao and Members of the State Legislature:

The City Council of the City of Lemoore supports AB 658 (Calderon) as amended August 20, 2012, which makes a declaration of existing law that when goods are delivered from out of state by common carrier, title passes out of state. The provisions in AB 658 restate California's Bradley-Burns sales and use tax law which has been in effect since January 1, 1956.

AB 658 will preserve the current method of allocating use tax revenues generated from out of state shipments to county pools of the customer's place of business rather than the location of in-state order desks. The end result is a broader distribution of revenue among local governments, as is currently the case.

Recently, a Superior Court decision ruled that sales tax rather than use tax, should be applied to out of state shipments, which would have the Bradley-Burns portion of the tax allocated to the location of in-state order desks and/or retailer administrative offices, even though such locations may not be the place of delivery.

The Superior Court's ruling:

1. Destroys 56 years of state sales and use tax law redistributing those revenues to only a few cities that may not have even participated in the sale.

2. Bradley-Burns revenues shift away from 90 percent of California's local entities to about 10 percent of the state's local jurisdictions.

Proponents of this case want to shift revenues into the hands of just a few local entities and away from county pools where the goods are being delivered. Through mass appeal efforts by the Board of Equalization, several prior attempts to change the way sales and use tax law is determined have been rejected. A negative ruling in this case, however, will change existing law without legislative review and could shift millions of dollars from county pools, thereby reducing revenues for the majority of California's cities and counties.

For the reasons outlined above, my fellow Council Members and I request your 'YES' vote in favor of AB 658 (Calderon).

Sincerely,

Willard J. Rodarmel
Mayor

AB 658 (Calderon) - As Amended
Legislative Proposal

August 20, 2012

AB 658(Calderon)

This measure adds Section 7205.2 to the Revenue and Taxation Code Section making a declaration of existing law that a sale takes place outside the state, and is therefore subject to use tax, if the property is located outside California at the time the sale is made, regardless of whether there is participation in the sale by a California retailer.

Such legislation would pre-empt a court case where the Judge's signed Statement of Decision that sales tax rather than use tax, should be applied to out of state shipments so that the Bradley-Burns portion of the tax is allocated to the location of in-state order desks and/or retailer administrative offices (even if such a location does not participate in the individual sale) rather than shared via the county allocation pools.

The negative ruling in this case will change existing law without legislative review and could shift more than $10 million in local use tax each year prospectively among counties and cities.

Background

Current Law

California's Bradley-Burns sales and use tax law has been in effect since January 1, 1956. Since that time, the state and local governments have always understood that local tax law follows state tax law as to whether a transaction is subject to sales tax or use tax.

Under current law, use tax applies when the property is located out of state at the time the sale is made. As a result, use tax revenues go to the county allocation pools unless the use tax is over $500,000 in a single transaction, in which case, the use tax is directly allocated to the jurisdiction of first functional use.

Past Legislation

In 1995, SB 1909(Dills) attempted to do almost exactly what the court is now proposing in the Judge's decision on behalf of the eight local entities. SB 1909 attempted to reallocate *use,* not *sales,* tax to accomplish a similar purpose. SB 1909 was vetoed by Governor Wilson.

At the BOE

In 1995, petitioners filed a "mass appeal" representing over 1,247 local tax petitions involving 94 jurisdictions, at the Board of Equalization (BOE). In each case, the taxpayer involved was an out-of-state company that was registered to collect use tax. The petitions argued that sales tax, rather than use tax, should be applied to out of state shipments so that the Bradley-Burns sales tax is allocated to the location of in-state order desks rather than shared via the county allocation pools.

When goods are delivered from out of state by common carrier, title passes out of state. Therefore, the tax revenues from out of state shipments are allocated to county use tax pools of the customer's residence rather than the location of in-state order desks. The result is a broader distribution of the revenue among local governments.

BOE staff denied the petitions *en masse* on May 21, 1996. An Appeals Conference was held on March 8, 2001 and the subsequent Decision & Recommendation again denied the petitions.

Petitioners requested an appeal before the elected BOE Members. The BOE Board decided to put that appeal on hold pending various meetings to discuss retroactive amendments to BOE Regulation 1802 and 1803 that would require the application of sales tax (not use tax) to sales of products shipped into California, with title passing outside the state, whenever there is local participation in the sales transaction.

The petitioners filed for relief in the Superior Court before final adjudication by the BOE Board. The judge denied the petitioner's relief stating they had not exhausted their administrative appeals at the BOE.

The regulatory changes and the 1,247 petitions were denied by the BOE Board during five board hearings during 2010-2012.

After having the 1,247 petitions denied at the BOE, eight petitioning jurisdictions filed suit in the San Francisco Superior Court.

Mass Appeals Court Case

Currently, three cases filed by eight cities against the BOE are working their way through the San Francisco Superior Court. Over 90 cities have intervened on the BOE side of the case(s).

The case (s) include-

City of South San Francisco v. the BOE (509231)
City of Brisbane v. the BOE (50932)
Cities of Alameda, Irvine, Newport Beach, Roseville, San Ramon and Santa Fe Springs vs. the BOE (509234)

Superior Court Judge James Robertson released his Final Statement of Decision on July 31, 2012.

Judge Robertson's decision is to grant prospective relief (not retroactive) to the petitioners in Case Nos. CPF-09-509231 and CPF-09-509234 (sales tax vs. use tax), and retroactive relief in Case CPF-09-509232 (internet retailer) to the City of Brisbane from February 2, 2009 through the date the internet retailer closed their Brisbane operation (approximately one year). The BOE will appeal the change in their adopted rules and procedures and the plaintiffs will be appealing the lack of retroactivity.

Fiscal Impact

These cases continue to be important to the majority of local agencies in California because of the potential for a massive and disruptive shift in the distribution of Bradley-Burns sales tax, Proposition 172 and ¼ cent county transportation funds concentrated into just a few agencies.

A 1996 preliminary analysis (based on the 1995 tax year) by BOE on the initial request concluded that allocating the tax to the sales office and away from the location of use had the effect of "concentrating" the tax in the hands of a few jurisdictions. The analysis identified approximately 49 local entities as potential *winners* and approximately 478 local entities as likely *losers*. A partial sampling of the mass appeal petitions for tax year 1995 (only) identified $10,190,115 that could potentially be subject to reallocation in that year alone.

Because the change would impact future distribution of revenues far beyond the specific claims named in the cases, even the petitioning agencies cannot be assured that they wouldn't eventually be overall losers in a statewide reallocation of revenues.

Winners and Losers

Absent a legislative remedy, the losers would outnumber the winners on a 9-1 ratio according to the BOE.

The 10 biggest *losers* are likely to be the following cities-

Los Angeles-	$1.4 million
San Francisco-	$1 million
Los Angeles County-	$467,000
Mountain View-	$404,000
Palo Alto-	$400,000
Sunnyvale-	$354,000
Fremont-	$319,000
Glendale-	$284,000
Alturas-	$278,000
Cerritos-	$268,000