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AB-2854 Bradley-Burns Uniform Local Sales and Use Tax Law. (2023-2024)

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Assembly Bill No. 2854

CHAPTER 842

An act to add Section 7213 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2854, Irwin. Bradley-Burns Uniform Local Sales and Use Tax Law.

The Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns) authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. Existing law, on or after January 1, 2016, 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 Bradley-Burns local tax revenues to any person, as defined, for any purpose, if the agreement results in a reduction in the amount of Bradley-Burns local tax revenues 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 require a local agency, as defined, to annually provide specified information relating to each agreement resulting in the direct or indirect payment, transfer, diversion, or rebate of Bradley-Burns local tax revenues to the California Department of Tax and Fee Administration. The bill would additionally require the local agency to publish that information on its internet website, as prescribed. The bill would impose monetary penalties on any local agency that fails to provide information to the department or fails to publish information to its internet website, as prescribed. By expanding the duties of local agencies, 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 the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7213 is added to the Revenue and Taxation Code, to read:

7213. (a) For purposes of this section:

(1) "Local agency" has the same meaning as defined in Section 53084.5 of the Government Code.

(2) "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 sales and use tax under this chapter to any person pursuant to an agreement.

(b) (1) Notwithstanding Section 7056, 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).

(2) (A) 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.

(B) If a local agency maintains an internet web page containing information about the local agency's economic development subsidies, including, but not limited to, the information required pursuant to Sections 53083 and 53083.1 of the Government Code, the local agency may include the information submitted to the department pursuant to subdivision (d) on that internet web page.

(c) 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 requirement outlined in subdivision (b).

(d) Notwithstanding Section 7056, 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.

(e) (1) (A) (i) If a local agency fails to timely provide the information required pursuant to subdivision (c) or (d), or fails to publish information to its internet 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.

(ii) (I) If a local agency provides a statement pursuant to clause (i), 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 timely comply 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. The department shall not grant an extension for a local agency based on the local agency's claim that the information is confidential.

(II) If the department grants an extension pursuant to subclause (I), 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 provided in clause (i).

(III) If the department declines to grant an extension pursuant to subclause (I), 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.

(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. 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.

(B) If a local agency fails to provide or publish the information within the applicable period determined pursuant to subparagraph (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, as follows:

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

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

(2) The provisions of Chapter 4 (commencing with Section 55121) of Part 30 apply with respect to the collection of the penalties imposed pursuant to this subdivision.

(3) All amounts required to be paid pursuant to paragraph (1), less adjustments and costs of administration, shall be deposited into the General Fund.

(f) Notwithstanding Section 7056, on or before June 1, 2025, and annually thereafter, the department shall publish on its internet website the information submitted pursuant to subdivision (d).

(g) The department may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this section. Until January 1, 2026, the department may prescribe, adopt, and enforce any emergency regulations as necessary to implement, administer, and enforce its duties under this section. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption and readoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other law, the emergency regulations adopted by the department may remain in effect for two years from adoption and may be readopted in accordance with subdivision (h) of Section 11346.1 of the Government Code.

SEC. 2. 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.