

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: BUSINESS COOPERATION PROGRAM

POLICY NO.: 900-21

EFFECTIVE DATE: October 31, 2019

BACKGROUND:

California imposes sales and use taxes on the retail sale or use of tangible personal property within the State, subject to a number of exceptions. State law defines tangible personal property as goods (not real estate) that can be seen, weighed, measured, felt, touched, or otherwise perceived by the human senses. Sales tax is the tax on the sale of tangible personal property within California, and is generally collected by retailers operating within the State. Use tax is the tax on the use, storage, or other consumption of tangible personal property not otherwise subject to sales tax, and is generally collected by retailers shipping goods into the State, or by (mostly business) consumers consuming property within the State.

The Bradley-Burns Uniform Sales and Use Tax Act (1956) provides for State administration of the local tax and is administered by the California Department of Tax and Fee Administration. Taxes are collected from sellers and purchasers by the State and later remitted to local governments. Generally, sales taxes are collected by businesses based on the location or “situs” of the transaction. The local use tax is generally paid by businesses when they consume taxable property, or collected by registered out-of-state businesses when selling property into the State. Local taxes are then allocated to local jurisdictions at the full 1% rate.

As of July 1, 2019, the statewide sales and use tax rate is 7.25%. State law allocates 6 percentage points of the 7.25% rate to the State and the remaining 1.25 percentage points – the Bradley-Burns local tax – to local governments. One percentage point is allocated to cities or counties and an additional .25 percentage point is allocated to county-level “Local Transportation Funds.” In the City of San Diego, the local tax is levied pursuant to Chapter 3, Article 2 of the San Diego Municipal Code.

The Bradley-Burns local tax applies in almost every case in which State sales or use tax is imposed. In addition, local jurisdictions such as cities and counties can levy their own sales and use taxes, known as district taxes (e.g. “TRANSNET”). Under State law, local jurisdictions may impose additional sales and use taxes at a total rate of up to 2% through ballot measures.

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Use taxes are often reported by out-of-state businesses to a county-wide pool which typically results in a “sharing” of this revenue among multiple jurisdictions based on pro-rata formulas derived from a jurisdiction’s sales tax allocations as a percentage of the total for the county. Accordingly, on a transactional basis, the City may only receive 48% of the use tax paid in connection with business conducted in San Diego.

In many cases, San Diego businesses can elect to conduct their sales, purchases, and tax reporting in a way that increases the City’s share of local tax revenue, even while paying the same amount of local tax. This Business Cooperation Program was designed to provide cash incentives to businesses that elect to conduct their business practices in this manner.

The Business Cooperation Program was originally enacted in 1996 by San Diego City Council Resolution R-288034, which has been rescinded to eliminate ineffective program elements. This policy supports the same Business Cooperation Program with minor updates and refinements to the administration of the program, and provides an additional level of clarity for businesses that elect to cooperate with the City.

PURPOSE:

It is the intent of the San Diego City Council (Council) to establish clear and transparent guidelines regarding local tax rebates offered by the City as a way to encourage business cooperation that results in increased general fund revenues.

DEFINITIONS:

“*Application*” means a document submitted by a *Business* to the City requesting a local tax rebate from the City.

“*Business*” means any corporation, partnership, limited liability company, joint venture, sole proprietorship, association, or trust, other than a public entity, that holds a current Business Tax Certificate issued by the City.

“*Changed business practice*” means affirmative steps taken by a *Business* that have the effect of increasing the City’s allocation of the local sales or use tax on a taxable transaction. Examples of a *changed business practice* include: (a) self-accruing use tax from vendors registered by the State to collect use tax; (b) causing a *Business*’ vendor to report use tax to the City on Schedule F; (c) creating a new point of sale within the City, provided that no such point of sale previously existed, and substantially all of the *Business*’ taxable transactions are with customers that are located outside the City; and (d) proactively restructuring a transaction, at the request of the City, such that the applicable local tax on that transaction is sales tax rather than use tax.

“*Revenue-sharing agreement*” means the agreement between the City and a *Business* that states the terms by which each party will benefit from previously *uncollectable revenue* which is

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allocated by the State to the City.

“*Uncollectable revenue*” means the portion of the local 1% Bradley-Burns Uniform Local Sales and Use Tax revenue that the City would not have realized but for a *changed business practice*.

POLICY:

It is the policy of the Council to attempt to capture additional local sales and use tax revenues that would otherwise, without City action, be distributed by the State to other jurisdictions, by providing tax rebates to cooperating businesses, subject to the limitations of California Government Code section 53084.5.

The City may rebate up to 45% of the local 1% sales or use taxes collected or paid by the *Business*, if all or part of such local 1% sales or use taxes constitutes previously *uncollectable revenue* to the City and the *Business* institutes a *changed business practices* in a way that measurably increases the City’s general fund revenue.

A. Procedures

1. Application

To be considered for a *revenue-sharing agreement*, an authorized representative of the *Business* shall submit an *application* to the City describing the proposed *changed business practice*.

2. Economic Development Department Review

City staff must analyze and evaluate the *application* and any supporting material, such as prior tax returns, to determine whether it would be advantageous to the City to enter into a *revenue-sharing agreement* with the *Business*.

3. Authorization

a) Mayoral Authorization

The Mayor, or his/her designee, shall have the authority to enter into

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revenue-sharing agreements having a term of up to 5 years.

b) Council Approval

Council approval is required for all *revenue-sharing agreements* having a term of more than 5 years. A *revenue-sharing agreement* brought to the Council for approval must be accompanied by a staff report to the Council describing the fiscal benefit to the City.

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4. Contract Administration

a) Payment of Tax Rebates

City staff shall routinely monitor the sales and use tax revenue subject to the *revenue-sharing agreement* and pay tax rebates to the *Business* only when all or part of the local taxes upon which such rebates are based would constitute previously *uncollectable revenue*.

b) Reporting

- i. Within 30 days of entering into a *revenue-sharing agreement*, the City will post the following information on its website:
 - a. Memo to the Council outlining the *revenue-sharing agreement* if the *revenue-sharing agreement* was not approved by the Council.
 - b. The name, identity, and the precise nature of the interest of all persons who are directly or indirectly involved in the transaction, as provided in accordance with San Diego Charter section 225 and Municipal Code section 21.0103.
 - c. The street-address(es) of the *Business*' facilities within the City of San Diego.
- ii. The City shall collect and update all reporting data at the end of each fiscal year, to the extent allowed by law.
- iii. The City shall maintain all reporting data throughout the term of the *revenue-sharing agreement*, unless otherwise required by State law, for any calendar quarter in which a *Business* receives a tax rebate.
- iv. The City shall post the previous fiscal year's aggregated reporting data on the City's website unless the program has only one cooperating *Business*.

HISTORY:

"Business Cooperation Program"

Adopted by Resolution R-312728 – 10/31/2019