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First Day of the 2018 Legislative Session: January 3, 2018 marks the first day of Session. **Budget Deadline:** January 10: Proposed 2018 Budget must be submitted by the Governor; **Legislative Deadline: February 16:** Last day for bills to be introduced.

SELECTED TWO-YEAR LEGISLATIVE PROPOSALS

Deadlines for Two-Year Bills: January 12: Last day for policy committees to hear and report to fiscal committee's bills introduced in 2017; **January 19:** Last day for any committee to hear and report bills to the Floor that were introduced in 2017; and **January 31:** Last day for each house to pass bills introduced in that house in 2017. For updated status reports: <http://leginfo.legislature.ca.gov/>

Sales and Use Taxes/ District Taxes

- **Metropolitan Planning Organizations: Transactions and Use Taxes.** Would authorize a metropolitan planning organization or regional transportation planning agency that is authorized to levy, expand, increase, or extend a transactions and use tax to levy that tax in only a portion of the jurisdiction, as an alternative to the entire jurisdiction. The author's office reported the bill is in response to voter trends where transportation sales tax measures that have failed, received support in certain segments of a district. **(AB 1324/ Gloria)** (Two-Year)
- **Snack Tax:** Intent language to enact policy that defines the term "snack food." ACA 2 would amend the constitution to repeal the voter-approved prohibition on taxation of specified food products for human consumption, and requires the application of sales and use tax beginning April 1, 2019. **(ACA 2 & AB 274/ Cristina Garcia)** (Two-Year)

Property Taxes

Property Tax Exclusion: New Construction Exclusion: Rain Water Capture system. Excludes from classification as "newly constructed" and "new construction" the construction or addition, on or after January 1, 2018, of a rain water capture system. SCA 9 would authorize the Legislature to exclude from classification as "newly constructed" the construction or addition, completed on or after January 1, 2018, of a rain water capture system. The BOE states that every \$1 million in rainwater capture systems installed equates to \$10,000 in local revenue loss. SB 558 is League supported. **(SB 558 & SCA 9/ Glazer)** (Two-Year)

Local Governance

- **Horse Racing: Payments to Cities: "Digital" Wages:** The digital age paved the way for advance deposit wagering (ADW); the bill directs the California Horse Racing Board to determine that bets made on the race track property using ADW are included as part of the total payments made to cities from the betting handle. **(AB 1508/ Chau)** (Two-Year)
- **Water Quality: Safe and Affordable Drinking Water Fund for Disadvantaged Communities:** Funding will come from a safe drinking water fee in the form of a fertilizer mill fee, a safe drinking water fee on dairies, and a new, small safe drinking water fee assessed monthly on water bills. **(SB 623/ Monning)** (Two-Year)

Local Voter Requirements / Notices to the Public

- **County Voter Information Guide:** Requires ballot pamphlets mailed to voters to include a notification that any new taxes approved by voters must be challenged within 60 days of that tax's approval. **(SB 348/ Leyva) (Two-Year)**
- **Transparency: Parcel Tax Notice:** Would require a local agency to provide thirty-day notice of a new parcel tax to any owner of record of a parcel affected by the tax, if that owner of record does not reside within the jurisdictional boundaries of the taxing entity. **(AB 448/ Daly) (Two-Year)**

GAS TAX REVENUE

Senate Bill 1, the Road Repair and Accountability Act of 2017 was signed into law. This legislative package invests \$54 billion over the next decade to fix roads, freeways, and bridges in communities across California and puts more dollars toward transit and safety. These funds will be split equally between state and local investments.

There are proposed Statewide initiatives in motion that if approved by the voters would repeal SB 1. At the time of print, the proposals (17-0033A1 and 17-0004) do not offer a replacement revenue solution.

Proposed Initiative: 17-0034: Requires That Proceeds of Bonds or Taxes Approved by the Voters Be Spent on the Specific Projects or Uses Approved by the Voters. Initiative Constitutional Amendment. Summary Date: 12/04/17 | Circulation Deadline: 06/04/18 | Signatures Required: 585,407

Proposed Initiative: 17-0033A1: Eliminates Recently Enacted Road Repair and Transportation Funding by Repealing Revenues Dedicated for Those Purposes. Requires any Measure to Enact Certain Vehicle Fuel Taxes and Vehicle Fees be Submitted to and Approved by the Electorate. Initiative Constitutional Amendment. Summary Date: 11/20/17 | Circulation Deadline: 05/21/18 | Signatures Required: 585,407 - (25% of Signatures Reached 12/15/2017)

Proposed Initiative 17-0004: Eliminates Recently Enacted Road Repair and Transportation Funding by Repealing Revenues Dedicated for Those Purposes. Summary Date: 07/10/17; Circulation Deadline: 01/08/18; Signatures Required: 365,880

Vehicles Miles Traveled Tax / Selected Findings

A study by the California State Transportation Agency recommends that the state replace existing transportation revenue with a funding system based on road use ("vehicle miles traveled tax."). **Findings: Data Security:** Manual mileage reporting ensured the highest amount of privacy and data security, but will be the most difficult to enforce; **Outsourcing for Administration and Collection:** Using third-party vendors to outsource administration and collection of revenue would be viable; **Revenue:** The report used a rate of 1.8 cents per mile to simulate a rate that would generate the same amount of funds that otherwise would have been collected through the gas tax. The report also recommends that further research provide details for pay-at-the-pump options, in-vehicle mileage tracking telematics, and other technologies.
http://www.dot.ca.gov/road_charge/resources/final-report/docs/final.pdf

CONSIDERATIONS / RECENT TAX REFORM EFFORTS/ MARKETPLACE FAIRNESS

MuniServices has long expressed the need for tax reform policy that addresses today's economy (shifting consumer spending), the e-commerce tax gap as well as enforcement efforts for collecting existing taxes to ensure out-of-state retailers comply with state law.

MuniServices, earlier this year, was told by the Governor's staff that California may not see tax reform effort until Congress acts. The President signed the Federal Tax Reform Package on December 22.

State Auditor Report/ Suggestions for the Tax Administration

The State Auditor in November 2017 published a report on how the Bradley-Burns Uniform Local Sales and Use Tax is assessed, collected, allocated, and distributed to local transportation funds. While the report's focus is on funding for transit services, the findings suggest "the State could increase its tax base by removing exemptions, taxing digital goods, and taxing services." The report recommends the California Department of Tax and Fee Administration (Tax Administration) should implement a two-year pilot of its authorized, but never funded, reward program for information resulting in the identification of unreported sales and use taxes.



The “1032 Program” (out-of-state compliance program) is a Tax Administration tool that is used to encourage retailers to remit taxes that they owe to the State of California and local taxing jurisdictions. The 1032 Program also conducts outreach and compliance efforts related to AB 155 (2012) that expanded the types of out-of-state retailers considered to have nexus with California.

State Controller Betty Yee in 2016 also set forth conceptual discussion points for tax reform. See: http://www.sco.ca.gov/Files-EO/Comprehensive_Tax_Reform_in_California_A_Conceptual_Framework_06_16.pdf

[Use Tax Reporting on FTB Forms](#)

Beginning in 2018 (AB 1593, Statutes of 2017) a taxpayer who reports use tax on an FTB return will be required to enter a number on the use tax line or to indicate that the taxpayer owes no use tax, or the taxpayer has remitted the tax to the Tax Administration. The new law anticipates collecting approximately \$6.1 million annually.

[Previous Legislative Intent](#)

“**Catalyst**”: SB 983 (2014) was the catalyst for a more serious policy conversation on sales tax reform. The bill would have shifted the point of sale for card lock systems from the place where the sale was negotiated to the ‘point of delivery of fuel to the vehicle.’ This legislation would have opened the door for other bills to redistribute Bradley-Burns sales tax, further destabilizing a jurisdiction’s tax base.

Broaden Tax Based on Services: SB 640 (2017) Spot bill; SB 1445 (2016) Spot bill; SB 8 (2015) proposed to broaden the tax base by imposing a sales tax on services; the bill did not apply to local voter-approved district taxes and did not lower the sales tax rate.

Third Party Vehicle Sales: AB 2321 from 2016 was intended to have the DMV transmit data to the BOE with respect to off-highway vehicles and for the BOE to allocate the use taxes to the specific jurisdiction where the vehicle is registered; current revenues are designated in the county-wide pool.

[In 2018 Support Federal Marketplace Fairness Legislation for the Collection of Existing Revenues](#)

Quill v. North Dakota from 1992 limits the collection of sales and use tax to vendors with a physical presence in the state. The decision stated that Congress could pass legislation to overrule this limitation. In general, under present law, if a seller does not have nexus in a state, and therefore does not collect tax, then a purchaser is required to pay a use tax in the same amount to his or her state government.

“Marketplace fairness” would require remote sellers to collect and remit State sales and use taxes. Current pending Congressional measures introduced in 2017 include: Remote Transactions Parity Act (H.R 2193) which is in the House. The Marketplace Fairness Act (S. 976) is in the Senate.

Estimates by the Government Accountability Office (GAO) report that state and local governments could have gained from \$8 billion to \$13 billion in 2017 if states were given authority to require sales tax collection from all remote sellers. This is between 2 and 4 percent of total 2016 state and local government general sales and gross receipts tax revenues. California in 2017 would have gained \$1 billion (low) to \$1.7 billion (high) if there were a requirement for remote sellers. (<https://www.gao.gov/assets/690/688437.pdf>)

The Tax Administration estimated the total receipts that are currently not taxed in the State were \$1.5 trillion in 2015. The Tax Administration estimated that for fiscal year 2016–17, the State lost about \$1.45 billion in revenue due to unpaid taxes on e-commerce transactions. Spread among approximately 2.7 million households and 4 million businesses statewide, this amounts to each household and business owing an average of about \$87. (<https://auditor.ca.gov/pdfs/reports/2017-106.pdf>)

Overturn Quill: The State of South Dakota’s October 2nd petition to the U.S. Supreme Court urges overturning *Quill*. Congress did not take up any form of streamlined sales tax legislation in 2017. The *Quill* decision (whether to hear the case to overturn *Quill* or not) will be made in January or February 2018. The effort to overturn the *Quill* decision has received widespread support from individual states and local government groups including the National Conference of State Legislators (NCSL).



Bi-Partisan Attorney Generals Including California's Join Amicus Brief to Close Online Sales Tax Loophole

The amicus brief is in support of a petition filed by the state of South Dakota — *South Dakota v. Wayfair, Overstock, and Newegg* — with the U.S. Supreme Court. Bipartisan support from the top legal officials in the United States shows that this is an issue that warrants attention. See: <http://www.scotusblog.com/wp-content/uploads/2017/11/17-494-cert-tsac-Colorado.pdf>

Impact Analysis/ Suggested Action: Upon request, MuniServices Client Services Managers can provide a specific revenue impact analysis for your jurisdiction to help quantify the revenue impact if Marketplace Fairness legislation were enacted. We encourage clients in early 2018 to send a letter to their respective Congressional representative encouraging support for adopting Marketplace Fairness legislation.

Tax Reform Considerations

MuniServices recognizes that successful tax reform will require thoughtful stakeholder input and consideration. The below is for discussion purposes:

Evaluate Exemptions: Adopt criteria and sunset. Note: There are hundreds of exemptions; the cost to locals is \$3.2 billion. A list (last published in July 2014) is available in Sales and Use Tax: Exemptions and Exclusions (Publication 61). The BOE has a series of questions and answers about the application of sales tax. The State Auditors report addresses the review of exemptions and the need to identify those that are outdated and ineffective.

See <http://www.boe.ca.gov/sutax/sutexempt.htm> for "new and sales and use tax exemptions."

Broaden Tax Based on Services: Lower the rate and broaden the base. Tax reform at the state level must include locals.

Pursue Prospective New Revenue: Cannabis taxes. "Modernize" or update business taxes. Includes local voter-approved UUT and sales tax measures.

Address Pooling: Change pooling of online retail sales; lower threshold to \$100,000 from \$500,000 on out-of-state sales.

Self-Accrual: Lower self-accrual of use tax on construction projects from \$5 million to \$1 million.

Proposed Ballot Initiative

Proposed California Initiative: 17-0018A1: Division of California into Three States. Initiative Statute.

Summary Date: 10/24/17 | Circulation Deadline: 04/23/18 | Signatures Required: 365,880 - (25% of Signatures Reached 12/21/2017)

Assuming this measure is approved by voters and the federal government and allowed by the courts, tax collections and spending by the existing State of California would end; existing state assets and liabilities would be divided among three new states with each making its own decisions about state and local taxes and spending.

https://archives.eirepublic.com/GOV/GOV_Mag_Jan2018.pdf

OVERTURN LOCAL VOTER-APPROVED UUT: PROHIBITS VIDEO STREAMING/ AB 252 (RIDLEY-THOMAS)

AB 252's author resigned from office on December 27, 2017. It is unclear whether the issue will be taken up by another Legislator.

<https://a54.asmdc.org/news/california-chills-bill-block-taxes-netflix-hulu>

AB 252 was introduced to overturn provisions of local voter-approved UUT ordinances by prohibiting for 5 years a local UUT on OTT (video streaming). The bill would preempt cities and counties who have levied a UUT that applies to OTT, and would directly impact 88 jurisdictions with a "video" provision. The author agreed to shift AB 252 to "interim study." In late December 2017, AB 252 was placed on the January 8, 2018 Assembly Revenue and Taxation Committee calendar, and later pulled. **www.NoOnAB 252.com:** About 60 vocal opponents that includes cities, labor, the cable industry, MuniServices, and others joined the effort. **Over The Top (OTT) Working Group:** After AB 252's hearing, an "OTT Working Group" was formed that includes volunteer representatives from California cities and MuniServices that are committed to working with local, state, and national policy makers and industry to ensure tax fairness with respect to this new streaming video technology and to uphold local voter protection and decisions.

**TAXING DIGITAL GOODS**

Federal: For several years, the wireless industry has sought a moratorium on new wireless taxes (content/digital goods such as music downloads). This law, as originally written, would affect cities that have not yet obtained voter approval of a modern telecom ordinance, and it would also affect a city with a modern ordinance that wished to go to the voters for a tax increase.

California: The State Auditor's report is recommending several changes to the sales tax law to broaden its base and to increase collections. To broaden the tax base and to recognize the changing economy, the Auditor also recommends extending sales tax to digital goods (such as games, streaming or downloaded video and music, and e-books).

<https://auditor.ca.gov/pdfs/reports/2017-106.pdf>

NET NEUTRALITY / FCC DECISION AND PROPOSED CALIFORNIA LEGISLATION EXPECTED IN 2018

The FCC in December 2017 voted to repeal "net neutrality" rules by returning broadband Internet access service to its prior classification as an information service, and reinstating the private mobile service classification of mobile broadband Internet access service. (WC Docket No. 17-108) It is unclear whether this decision will affect UUT receipts from OTT (streaming video). If it forces small providers out of the market and causes prices to rise due to less competition, it may increase UUT receipts. However, it is too early to tell, particularly considering the ongoing controversy regarding the local taxation of OTT. California's Senator Scott Wiener in late December announced his plan to introduce legislation in 2018 for specific California net neutrality requirements.

UUT MEASURES (2020 SUNSET) (AB 1717 & AB 792)**AB 1717/ Prepaid Wireless Collection (2020 Sunset)**

MuniServices led the local government efforts for AB 1717 that became law in January 2016, which is landmark legislation that sets up a collection mechanism for prepaid wireless revenues. MuniServices will continue to stay close to any future study on the costs and implementation of AB 1717 especially in consideration of the pending 2020 sunset. *Legislation extending AB 1717 needs to be adopted during the 2018 or 2019 legislative session.*

State Moratorium on Local UUT / Clean Energy Resources (2020 Sunset)

AB 792 (Chapter 534, Statutes of 2014/ Mullin) became effective by imposing a moratorium until 2020 on local UUT taxation of electricity derived from clean energy resources such as solar, and certain types of cogeneration and fuel cells, where the resource is located on the user's property. *Legislation extending AB 792's UUT exemption would need to be adopted during the 2018 or 2019 legislative session.*

PROPERTY TAXES / SPLIT ROLL INITIATIVE**Proposed Initiative: 17-0055: The California Schools and Local Communities Funding Act of 2018.**

Submitted for Title and Summary on December 15, 2017; Comments accepted through January 16, 2018.

The proposed initiative would remove Proposition 13's restrictions on reassessments and tax increases for corporate-owned property. The initiative's proponents are seeking to eliminate a "loophole" that allows corporations to avoid paying as much as homeowners, and say it would help small businesses by eliminating taxes on their fixtures and equipment.

AB 1250 (JONES-SAWYER) / COUNTIES: CONTRACTS

Guest Commentary. *By: Clare Gibson, an attorney at Jarvis, Fay, Doporto & Gibson, LLP*

Following strong opposition from a state-wide coalition of over 500 public and private entities, including MuniServices, AB 1250 (Jones-Sawyer), a bill to restrict county contracts for personal services, never made it to the Governor's desk in 2017. Instead, it was referred to the Senate Rules Committee. AB 1250 is down, but not out. Potential restrictions on service contracts remain a critical issue for counties, and potentially for cities and other local agencies. AB 1250 will impose complex and burdensome restrictions and requirements that are both unprecedented under and inconsistent with established law. Counties and other public agencies *should* contract out for certain services. Service contracts are essential both to prudent management of public funds, and to provide levels and types of public services that cannot be provided by regular employees. Refer to the following link to access Ms. Gibson's commentary: http://www.muniservices.com/wp-content/uploads/AB_1250_Jones-Sawyer_-_Local_Government_Contracts_-_Counties_-_Guest_Commentary_122917_-_Final_.pdf

**OFFICE OF TAX APPEALS / TAX ADMINISTRATION / EMERGENCY REGULATIONS NOTICE DECEMBER 26, 2017**

Clients are encouraged to contact Janis Varney, MuniServices Sales and Use Tax Vice President for additional information regarding the regulations guiding the local allocation process. Janis can be reached at Janis.Varney@MuniServices.com.

The Taxpayer Transparency and Fairness Act of 2017 (Act) restructured the State Board of Equalization (BOE) and separated its functions among three entities to guarantee impartiality, equity, and efficiency in tax appeals; to protect civil service employees, to ensure fair tax collection statewide; and to uphold the California Taxpayers' Bill of Rights. These three entities are the BOE, Office of Tax Appeals (OTA), and the California Department of Tax and Fee Administration. The OTA was established by the Act on July 1, 2017 and, beginning January 1, 2018, will be conducting appeals on taxes and fees that were previously conducted by the BOE, such as appeals on franchise and personal income tax, sales and use tax, and other special taxes and fees. The OTA is independent of any state taxing authority.

The Act requires the OTA to adopt regulations to govern its appeals processes and procedures prior to January 1, 2018. MuniServices participated in the emergency regulatory process and provided comments with respect to the proposal.

In meetings with Marybel Batjer, Secretary of the Government Operations Agency, and the CDTFA's new executive director, Nick Maduros, MuniServices representatives expressed that our focus with the new agency transition is to assure that all local agencies continue to have the needed regulations and rules in place for governing local sales and use tax allocations and that a process is in place in cases when appeals become necessary. We noted that MuniServices was a vocal advocate during the development of Regulation 1807, Petition for Reallocation of Local Tax (Bradley Burns; Transactions and Use Tax), Regulation 1828, Petitions for Distribution or Redistribution of Transactions and Use Tax, and the regulatory efforts to implement AB 1717 (Regulation 2640, prepaid wireless collection mechanism).

Source: <https://ota.ca.gov/wp-content/uploads/sites/54/2017/12/Notice-and-Finding-of-Emergency.pdf>

SELECTED HEARINGS AND LEGISLATIVE CONFERENCES

- January 10 @9:30 am. Senate Governance and Finance Informational Hearing, "A Preview of Federal Tax Reform: What it Means for California's 99%"
- January 17 @9:30 am. ARB's 2018 Scoping Plan (Cap and Trade Program): Capitol Joint Hearing
- February 20 @ 9:30 am. Cannabis Regulation: An Update on Statewide Implementation: Capitol Joint Hearing

Legislative Days and Receptions

- January 8 - 10: California Contract Cities Association Legislative Days
- January 11 @ 4:30 Capitol Network Reception in Sacramento
- April 19 in Sacramento: League of Cities Legislative Action Days
- May 16 in Sacramento County: CSAC Legislative Conference

Presentations

- **February 2 @ 8:45 am/ City Managers Conference: Topic: "City Managers Guide to the Tax Measure Galaxy.** Presenters: Retired City Manager, Fran David; Attorney Ben Fay; and Mike Madrid (Grass Roots Labs). Fran Mancina with MuniServices will moderate.
- **February 22 @ 2:45/ CSMFO Annual Conference. Topic: Sharing the Tricks of the Budget Trade.** Presenters include Robert Hamud with MuniServices.

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