



PART 1: CONSIDERATIONS BEYOND WINNERS AND LOSERS / SCA 20 (GLAZER)

Proposed SCA 20 (April 23, 2018 version) would, and if approved by the voters, shift the allocation of sales and use tax for all online purchases from point-of-sale (POS) to point-of-destination. While the current system allows jurisdictions that house distribution centers and warehouses that fulfill internet sales to receive sales and use tax allocations, those jurisdictions would lose these revenues under SCA 20, and cities and counties with residents that make purchases online would instead receive increased revenues.

Based on MuniServices' analysis, we believe an insignificant percentage of all statewide sales taxes are attributed to warehouse distribution facilities. The focus of SCA 20 has primarily been around the impacts of e-commerce sales tax transactions, and how public funds are being used when cities enter into sales tax rebate agreements to attract warehouse and distributions centers to their jurisdictions. These are important issues and MuniServices agrees these need to be addressed, however there are many additional factors to consider as well, including the impact for those local governments that have not entered into sales tax rebate agreements but are home to warehouses or distribution centers.

The State Auditor in 2017 published a report concerning how the Bradley-Burns Uniform Local Sales and Use Tax is assessed, collected, allocated, and distributed to local transportation funds. SCA 20's intent comes from this report yet does not expand revenues nor implement other recommendations outlined in the report. Sales tax rebate agreements have gained increased attention as a legislative issue.

SB 533 (Chapter 717, Statutes of 2015) requires a local agency entering into an agreement that would reduce the Bradley-Burns revenues received by another local agency to notify the affected local agency 60 days prior to ratification. The Legislature is currently considering SB 2853 (Medina) that would require local agencies to hold a public hearing before approving or granting economic development subsidies of \$100,000 or more for warehouse distribution centers, and during the term of such subsidies. With California cities and counties competing not only with each other, but also with other states for jobs, there needs to be some discussion about how to handle rebates. There is some impetus toward banning them altogether, but the broader consequences of this activity in the marketplace for jobs should also be considered.

[SCA 20's Committee Hearings and Status](#)

SCA 20 was heard in the Senate Appropriations Committee on May 22, 2018. Please refer to the follow link to watch the May 22 SCA 20 testimony (begins at 1:19:20): <http://senate.ca.gov/media-archive>. The Committee today (May 25) was scheduled to consider whether to send SCA 20 to the entire Senate Floor. The Chair announced that the four (4) proposed Senate Constitutional Amendment measures, which includes SCA 20, that were to be considered will be heard at a different date since they were not subject to the May 25 legislative deadline for fiscal committees to report bills the Floor.

MuniServices was notified that the author plans to have SCA 20 amended with language that will implement a phase-in/out approach to mitigate the measures potential impact to those agencies that will lose revenue as a result of the bill. The phase-in/out approach would begin January 1, 2020 and spread the transitional period across nine (9) years. Beginning with the final transition year, 100% of on-line sales tax revenue would be distributed to the "point-of-destination." Refer to the following link for bill status updates:
http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201720180SCA20.

We are continuing to review SCA 20 and respond to client inquiries. MuniServices' April 6, 2018 Policy Update captures many of our initial considerations (<https://www.avenuinsights.com/2018/04/06/1131/>). The below was prepared to help clients navigate through the current version of SCA 20. Please reach out to your respective MuniServices Client Manager for specific impact or one of the contacts listed below.



SCA 20's Reach Beyond On-Line Sales

- **Taxes Impacted by SCA 20:** SCA 20 includes a broad definition of online purchases, and it is not clear what the fiscal impact will be on jurisdictions whose tax base includes companies that conduct on line business-to-business transactions, sell construction materials, or have other complex sales transactions. The local taxes for online sales that are currently being reported by taxpayers and distributed to local jurisdictions based on point-of-sale (POS) such as the warehouse distribution locations are impacted.
- **County Pools:** The local tax allocated to the countywide pools is not going to change as it is a “use tax” and excluded from SCA 20.
- **District Taxes:** For on-line orders that are shipped, district taxes are collected and remitted based on the delivery address. This is current practice and will continue.
- **Impact on Purchases Made on Amazon.com:** Amazon will continue to report their sales as subject to use tax, not sales tax. Distribution warehouses are not considered places of businesses of Amazon.com. Also, the warehouse itself and the merchandise in them is owned by a subsidiary company and not Amazon.com.

Concerns Regardless of Winning or Losing Under SCA 20

- **“Site-to-Store” Purchases Revenue:** “Site-to-store” are those purchases made on-line. These orders are picked up at a place where the retailer is located. Under the current California Department of Tax and Fee Administration (CDTFA) rules the revenue for “site-to-store” is reported to the countywide pools of the location of the retailer where the merchandise is picked up. MuniServices was told by the author’s office that the CDTFA has requested that SCA 20 include language that continues this sourcing practice.
- **SCA 20 Goes Beyond Warehouses and Crosses Into “Business-to-Business” Transactions:** SCA 20 will apply to retailers that are in the “trade” businesses. These include business that are selling retail and selling resale to other stores. Many of these businesses also have an on-line presence.
- **Administrative Burden: Sales Must be Tracked Using Multiple Criteria:** Tracking systems must be in place for POS purchases, on-line orders shipped and delivered based on customer address, and tracking purchases that are “site-to-store.”
- **Returns/ Credits:** It is unclear how sales adjustments will be made in cases where on-line purchases are made and returned.
- **Taxpayer Compliance:** The ability to determine whether the taxpayer is correctly reporting the local tax under the sales criteria will be challenging and near impossible to confirm.
- **CDTFA Administrative Costs:** SCA 20 will make it difficult on businesses to track the proper place to which taxes should be reported causing increased errors and higher costs to administer. The Senate Appropriations Committee analysis states: “Specifically, CDTFA would incur increased costs to update regulations, develop new allocation schedules, revise publications, prepare special notice, revise audit and compliance manuals, program computers, train staff, and answer inquiries from taxpayers. In addition, the department would experience additional workload for its Local Revenue Allocation Section and Allocation Group to review local tax schedules, verify local tax allocations, and investigate and process misallocation inquiries. CDTFA’s local tax cost allocation model is designed such that any increased costs associated with this measure would be borne by all funds in which sales and use tax revenue is deposited, including the General Fund.”
- **South Dakota vs. Wayfair – Potential to Overturn Quill v. North Dakota:** If *Quill* is over-turned by the United States Supreme Court, there may be a significant increase in sales and use tax revenue being allocated to local jurisdictions via the county pools from increased collection of California sales taxes. The *Quill* ruling concerned use tax and effectively prevented states from collecting any sales tax from retail purchases made over the Internet or other e-commerce route unless the seller had a physical presence in the state.



Known SCA 20 Support and Opposition (As Amended April 23, 2018)

Support: California cities including Buena Park, Chino Hills, Mission Viejo, and Placentia; Orange County Transportation Authority. **Opposition:** California cities including: Dinuba, Emeryville, Fresno, and Ontario; California Manufacturers & Technology Association California Retailers Association, Computing Technology Industry Association, Cutler-Orosi Joint Unified School District, Dinuba Chamber of Commerce, Jim Manning Dodge, Inc., Layer 77, LLC., Leadership Northern Tulare County, Leroy Bakery Electric, Pacific Fire, Peña's Disposal, Inc., Proteus, Inc., and S&K – Siohu Inc. (Source: Senate Elections and Constitutional Amendments Committee Analysis from 5/15/2018)

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PART 3: RESOURCES

- **SCA 20 (Glazer):** http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180SCA20
- **MuniServices Policy Update / Changing the Way Online Sales Revenue Gets Distributed:** <https://www.avenuinsights.com/2018/04/06/1131/>
- **State Auditors Report:** <https://www.auditor.ca.gov/pdfs/reports/2017-106.pdf>
- **League of California Cities SCA 20 and SB 1466 Analysis:** <http://cacities.org/Resources-Documents/Policy-Advocacy-Section/Policy-Development/Policy-Committees/Revenue-and-Taxation/Agendas-and-Highlights/Rev-and-Tax-Agenda-4-12-18>
- **SB 533 (Pan):** http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0501-0550/sb_533_cfa_20150818_101936_asm_comm.html
- **SB 2853 (Medina):** http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2853
- **Quill Corp. v. North Dakota (91-0194), 504 U.S. 298 (1992):** <https://www.law.cornell.edu/supct/html/91-0194.ZO.html>