

MEMO

To: City of Cupertino
City Council

From: Townsend Public Affairs, Inc.

Date: June 1, 2021

Subject: Consider adopting a position on Senate Bill 792 (Glazer) Sales and use tax: retailers: reporting

Bill Information

The official text of SB 792 can be found [here](#)¹.

Summary

SB 792 requires a retailer, whose annual sales of tangible personal property transacted online exceeded \$1 million in the previous calendar year, to provide information for each local jurisdiction the gross receipts from the sale of goods shipped or delivered to a purchaser in that jurisdiction. Retailers would be required to submit this information, along with their tax filings, for reporting periods beginning on or after January 1, 2022.

The bill indicates that a qualified retailer who refuses to provide this information to the state will be subject to a \$5,000 fine.

Status

SB 792 was approved by the Senate Appropriations Committee (5-2) on May 20th. The measure is currently awaiting consideration on the Senate Floor.

Support

According to the author, "This is a transparency bill that will shine light on a major and growing problem in California local finance. Current tax law has created an environment that puts the power to allocate local sales tax into the hands of online retailers. These retailers can choose to allocate any and all sales tax revenues to a specific location within the state- be that a warehouse, distribution or sales center. What results is a race to the bottom as retailers offer to direct all of their online sales tax to a single city in exchange for the city giving 50% to 80% of those public funds to the retailer. Private companies profit doubly from these tax-sharing agreements, which allow them to keep both the revenue from their retail sales, and the public funds shared with them by the cities. California cities are sending an estimated \$1 billion in taxpayer dollars to giant

¹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20210220SB792

corporations each year – at a time when state and local governments are scrambling to fund public safety, roads, affordable housing, and tackling the homeless crisis. Californians deserve to know just how much revenue their cities are losing due to these agreements. This bill would provide transparency by requiring retailers report taxable sales by the city or ZIP code of the purchaser so that city governments and their residents have a better understanding of this unfair process.”

There is no official support for SB 792.

Opposition

Opponents of the measure believe that SB 792 is the first step in modifying the way in which sales tax for online purchases is distributed within California. The bill’s author, Senator Glazer, has previously introduced legislation that would have modified sales tax distribution formulas related to point of sale versus point of purchase. This type of changes would have significant financial ramifications for public agencies throughout the state.

The California Retailers Association is opposed to SB 792, as the bill would require a significant amount of new reporting for businesses that impacted by the provisions of the bill, without providing any form of benefit to the companies in question.

Opponents of SB 792 include: California Retailers Assn; City of Fresno; and City of Perris

Additional Information

During the Legislative Review Committee, a question was raised about sales tax law in other states. As it relates to sales tax, states generally either assess an “origin-sourced” sales tax or a “destination-sourced” sales tax. Origin-sourced sales are taxed where the seller is located, whereas destination-sourced sales are taxed at the location where the buyer takes possession of the item sold.

There are 11 states that collect an origin-sourced sales tax: Arizona, Illinois, Mississippi, Missouri, New Mexico, Ohio, Pennsylvania, Tennessee, Texas, Utah, and Virginia. California is considered a “mixed sourcing state” as city, county and state sales taxes are origin-based, while district sales taxes (supplementary local taxes) are destination-based. Additionally, out-of-state retailers may be required to collect state sales taxes, and have options regarding how they may establish their state nexus. One common nexus is by having inventory in the state, such as a fulfillment center, in which case the fulfillment center would be considered the point of sale for origin-based sales taxes. California is unique in this structure. The remainder of states either have no sales tax or they levy a destination-sourced sales tax.

Recommended Action

Recommend that the City Council take an oppose position on SB 792 and authorize the Mayor to send letters to the state legislature