

**Section:** 302 (Exhibit I provides the complete language of Section 302 of the Streamlined Sales and Use Tax Agreement (SSUTA))

**Title:** State and Local Tax Bases

### **Summary**

California does not have a common (identical) state, local, and district tax base. Under an identical tax base, when the state sales or use tax is imposed on a transaction, the local and applicable district sales or use taxes are also imposed. This means that a transaction subject to an exemption or exclusion from state sales or use tax is also subject to an exemption or exclusion from local and district sales or use taxes.

Conforming to the provisions of SSUTA Section 302 would require the elimination or expansion of the exemptions currently authorized by statute for the state, local and/or district portions of the sales and use tax to create an identical tax base.

A partial exemption from a portion of the state component of the sales and use tax is provided under certain circumstances for the sale or use of qualifying farm equipment and machinery; timber harvesting equipment; tangible personal property used in teleproduction and post production activities; diesel fuel used in farming or food processing activities; racehorse breeding stock, and tangible personal property used in a rural investment. However, qualifying transactions remain subject to a portion of the state component of the sales or use tax, as well as local and district sales or use tax.

Additionally, the state, local, and district sales and use tax bases differ on the sale, purchase, or lease of tangible personal property pursuant to a fixed price contract; sales of property, other than fuel or petroleum products, to operators of aircraft common carriers; and property delivered outside a taxing district.

Conforming to Section 302 will require California to revise most, if not all of the Revenue and Taxation Code sections (Sections) and Code of Regulations, Title 18 sections (Regulations) identified in this analysis. A Revenue Estimate that quantifies the impact of conforming to Section 302 on the state and local taxing jurisdictions is attached as Exhibit II.

### **Description**

SSUTA Section 302 requires that member states have a common or identical tax base for all taxing jurisdictions by December 31, 2005, unless otherwise prohibited by federal law, except for sales or use tax

levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

### **Related SSUTA Sections**

Section 301: State Level Administration

Section 308: State and Local Tax Rates

Section 316: Enactment of Exemptions

Section 322: Sales Tax Holidays

Section 323: Caps and Thresholds

### **Related California Sections and Regulations**

Section 6051.6	Exemption from tax; aircraft common carriers
Section 6201.6	Exemption from tax; aircraft common carriers
Section 6356.5	Farm equipment and machinery
Section 6356.6	Timber harvesting equipment
Section 6357.1	Diesel fuel; farming business
Section 6358.5	Racehorse breeding stock
Section 6376.1	Fixed price contracts exemption
Section 6378	Property used in teleproduction and post production activities
Section 6378.1	Rural investment tax exemption
Section 6385	Common carriers
Section 7202	Required provisions of county sales tax; credit for city tax
Section 7203	Required provisions of county use tax
Section 7261	Required provisions of the transactions tax
Section 7262	Required provisions of the use tax
Regulation 1525.7	Rural Investment Tax Exemption
Regulation 1532	Teleproduction or Other Postproduction Service Equipment
Regulation 1533.1	Farm Equipment and Machinery
Regulation 1533.2	Diesel Fuel Used in Farming Activities or Food Processing
Regulation 1534	Timber Harvesting Equipment and Machinery
Regulation 1535	Racehorse Breeding Stock
Regulation 1803	Application of Tax
Regulation 1805	Aircraft Common Carriers
Regulation 1821	Foreword
Regulation 1823	Application of Transactions (Sales) Tax and Use Tax

**Uniform Tax Base - In General**

California's sales and use tax rate is comprised of three separate components, California Sales and Use Tax (state), Bradley-Burns Uniform Local Sales and Use Tax (local), and Transactions and Use Tax (district).

Type	Rate	Code Section
State	6.25%	
State (General Fund)	4.75%	6051, 6201
State (Fiscal Recovery Fund)	0.25%	*6051.5, 6201.5
State (Local Revenue Fund)	0.50%	6051.2, 6201.2
State (General Fund)	0.25%	6051.3, 6201.3
State (Local Public Safety Fund)	0.50%	§35 Art. XIII CA Constitution
Local	1.00%	
County Transportation Funds	0.25%	*7203.1
City and County Operations	0.75%	*7203.1
District	0.10 - 0.50%	Various

\* Operative 7/1/04 (AB 7X The California Fiscal Recovery Financing Act)

The local sales and use tax is applicable in all of California's 58 counties and in its 478 cities. District taxes are additional transaction (sales) and use taxes imposed by some cities and counties and by special taxing jurisdictions pursuant to the Government Code, the Public Utilities Code and the Revenue and Taxation Code. District taxes are imposed pursuant to enabling legislation from the state legislature, by means of ordinances adopted by the taxing entities' governing boards and approved by the entities' voters. As of April 1, 2005, there were 66 district taxes in effect.

In general, the ordinances imposing the local and district taxes must include provisions identical to those of the state sales and use tax law. Accordingly, except as noted below, when the state sales or use tax is imposed on a transaction, the local and district sales or use taxes must also be imposed at the full tax rate. That is, when a transaction is subject to an exemption or exclusion from the state sales or use tax, the transaction is also subject to an exemption or exclusion from the local and district sales or use taxes.

Reference: *Analysis of the Uniform Local Sales and Use Tax Law: Business Taxes Law Guide*; *Analysis of the Transactions and Use Tax Law: Business Taxes Law Guide*

**Exceptions to a Uniform Tax Base**

- **Aircraft Common Carrier**

An exemption from state sales tax for the sale of qualifying tangible personal property sold to aircraft common carriers is provided when certain conditions are met. An exemption from local and district sales and use tax for the sale of qualifying tangible personal property sold to aircraft common carriers is

also provided. However, the qualification requirements under the state, local, and district sales and use tax laws differ. In addition, the local sales and use tax law only provides a partial exemption from the local tax when the state and district laws provide for a full exemption. This results in a tax base that is not identical.

### ***State Tax***

The sale of tangible personal property, other than fuel and petroleum products, to common carriers, including foreign air carriers, is exempt from sales tax when such property is:

- A. Shipped by the seller via the facilities of the purchasing carrier under a bill of lading, to an out-of-state point, and
- B. Actually transported by the common carrier to the out-of-state destination, pursuant to the bill of lading, over a route the California portion of which the purchasing carrier is authorized to transport cargo under common carrier rights, and
- C. Not put to use until after the transportation by the purchasing carrier to the out-of-state destination, and
- D. Used by the carrier in the conduct of its business as a common carrier.

The sale of tangible personal property, other than fuel and petroleum products, to foreign air carriers is exempt from sales tax when such property is:

- A. Transported by the foreign air carrier to a foreign destination, and
- B. Not put to use until after the transportation by the purchasing foreign air carrier to the foreign destination, and
- C. Used by the foreign air carrier in the conduct of its business as a common carrier by air of persons or property.

Reference: Section 6385(a) and (b), Regulation 1621(b)(1) and (b)(2)

### ***Local Tax***

The sale of tangible personal property, other than fuel and petroleum products, is partially exempt (currently 75% of the local tax rate) from the local sales tax when such property is sold to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property under the authority of the laws of this state, the United States, or any foreign government.

The storage, use, or other consumption of tangible personal property, other than fuel and petroleum products, is partially exempt (currently 75% of the local tax rate) from local use tax when such property is purchased by operators of aircraft to be used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property for hire or compensation under a certificate of public convenience and necessity issued under the laws of this state, the United States, or any foreign government.

Reference: Sections 7202 and 7203, Regulation 1805

### ***District Tax***

The sale of tangible personal property, other than fuel or petroleum products, is exempt from the district sales tax when such property is sold to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is to be used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property under the laws of this state, the United States, or any foreign government.

The storage, use, or other consumption of tangible personal property, other than fuel and petroleum products, is exempt from district use tax when such property is purchased by operators of aircraft to be used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property for hire or compensation under a certificate of public convenience and necessity issued under the laws of this state, the United States, or any foreign government.

Reference: Sections 7261 and 7262, Regulation 1825

- **Partial Exemptions – State Tax**

California provides several partial exemptions from a portion of the state component of the sales and use tax that are not authorized for the local or district components of the sales and use tax. This results in a tax base that is not identical.

When transactions meet the applicable statutory conditions, the transactions are exempt from the state component of the sales and use tax imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5. However, the transactions remain subject to the state component of the sales and use tax imposed or administered by Sections 6051.2, 6201.2, and Section 35 of Article XIII of the California Constitution, as well as the local and applicable district components of the sales and use tax.

*Farm equipment and machinery:* As authorized by Section 6356.5, the sale, storage, use, or other consumption in this state, of farm equipment and machinery, and parts of farm equipment and machinery, is partially exempt when purchased by a qualified person for use primarily in producing and harvesting agricultural products and the requirements of Regulation 1533.1 are met.

Reference: Section 6356.5, Regulation 1533.1

*Timber harvesting equipment:* As authorized by Section 6356.6, the sale, storage, use, or other consumption in this state, of off-road commercial timber harvesting equipment and machinery, and parts of off-road commercial timber harvesting equipment and machinery, is partially exempt when purchased by a qualified person for use primarily in timber harvesting and the requirements of Regulation 1534 are met.

Reference: Section 6356.6, Regulation 1534

*Property used in teleproduction and postproduction activities:* As authorized by Section 6378, the sale, storage, use, or other consumption in this state, of certain tangible personal property used primarily in teleproduction and postproduction activities is partially exempt when purchased for use by a qualified person and the requirements of Regulation 1532 are met.

Reference: Section 6378, Regulation 1532

*Diesel fuel used in farming activities or food processing:* As authorized by Section 6357.1, the sale, storage, use, or other consumption in this state of diesel fuel used in farming activities or food processing is partially exempt when the requirements of Regulation 1533.2 are met.

Reference: Section 6357.1, Regulation 1533.2

*Racehorse breeding stock:* As authorized by Section 6358.5, the sale, storage, use, or other consumption in this state, of racehorse breeding stock is partially exempt when purchased for use by a qualified person and the requirements of Regulation 1535 are met.

Reference: Section 6358.5, Regulation 1535

*Tangible personal property used in a rural investment:* Commencing on and after January 1, 2001, and before January 1, 2006, Section 6378.1 authorizes the rural investment tax exemption, which partially exempts the sale, storage, use, or other consumption in this state, of tangible personal property, as defined in Regulation 1525.7, subdivision (b)(6), when purchased by an eligible entity, as defined in subdivision (b)(3), and the requirements of Regulation 1525.7 are met.

As provided by Section 6378.1, the California Infrastructure & Economic Development Bank (CIEDB) determines who is eligible to receive this partial exemption and monitors eligible entities for compliance with the requirements of the partial exemption. As the aggregate amount of this partial exemption is limited, the CIEDB Board determines the amount of this partial exemption available to each eligible entity.

Reference: Section 6378.1, Regulation 1525.7

- **Fixed Price Contract Exemptions**

A fixed price contract exemption generally provides that the sale, storage, use or other consumption of tangible personal property in this state is exempt from a tax increase or newly imposed tax if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the tax increase or newly imposed tax. A lease of tangible personal property, which is a continuing sale of that property is exempt from a tax increase or newly imposed tax for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the tax increase or newly imposed tax.

California law authorizes a fixed price contract exemption from certain components of the state sales and use tax rate for qualifying contracts entered into prior to July 15, 1991, but not for local sales and use taxes. A contract that qualifies for exemption from the applicable components of the state sales and use tax rate remains subject to local sales and use taxes and applicable district sales and use taxes. However, since these fixed price contract provisions apply only to contracts entered into prior to July 15, 1991, the use of the exemption is very limited.

A fixed price contract exemption is also authorized for a district tax increase or newly imposed district tax when statutory requirements are met. However, a transaction qualifying for a district tax fixed price contract exemption will be subject to the taxes imposed under the local sales and use tax law and generally those imposed under the state sales and use tax law. Additionally, the state fixed price contract exemption provides an exemption from components of the state sales and use tax rate for

materials and fixtures obligated under a building construction contract or engineering construction contract entered into prior to July 15, 1991. The district sales and use tax law does not contain a like provision. This results in a tax base that is not identical.

Reference: Sections 6376.1<sup>1</sup>, 6376.2<sup>2</sup>, 7261(g) and 7262(f), Regulation 1821

- **Delivery Outside the District or County – Sales Tax**

The district sales tax does not apply to the sale of tangible personal property to be used outside the district, but within the state, when the property is shipped or delivered by the retailer, his or her agent, or a common carrier to a point outside the district, pursuant to the contract of sale. State and local sales taxes apply to the sale of tangible personal property delivered anywhere in California unless the sale is otherwise subject to an exemption or exclusion from tax. This results in a tax base that is not identical.

Reference: Section 7261, Regulation 1821

### **Revisions required to conform to the SSUTA**

Conforming to SSUTA Section 302 will require revisions to most if not all of the Sections and Regulations listed in this analysis.

### **Impact**

Conforming to SSUTA Section 302 would require amendments to California's Sections and Regulations to create an identical tax base. This would require either the elimination or expansion of the partial exemptions currently authorized for the state, local and/or district sales and use tax. The elimination of these exemptions would cause an increase in tax or tax reimbursement for certain consumers. An expansion of each partial exemption to a full exemption would result in reduced revenues for the state and local jurisdictions.

A Revenue Estimate that quantifies the impact of conforming to Section 302 on the state and local taxing jurisdictions is attached as Exhibit II.

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<sup>1</sup> Section 6376.1(c) authorizes a fixed price contract exemption for the taxes imposed by Sections 6051.5 and 6201.5 for transactions on or after July 15, 1991. Sections 6051.5 and 6201.5 were repealed as of January 1, 1994.

<sup>2</sup> Section 6376.2 authorizes a fixed price contract provision for the taxes imposed by Sections 6051.6 and 6201.6. These sections were repealed as of January 1, 1995.



**Section 302: STATE AND LOCAL TAX BASES**

Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.



**STREAMLINED SALES AND USE TAX AGREEMENT  
SECTION 302 - STATE AND LOCAL TAX BASES**

**Proposal**

Section 302 requires that member states have a common or identical tax base for all taxing jurisdictions unless otherwise prohibited by federal law, except for sales and use tax levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. California provides several partial exemptions from a portion of the state component of the sales and use tax that are not authorized for the local or district components of the sales and use tax.

**Background, Methodology, and Assumptions**

There are currently six partial exemptions in effect. That is, the sale and purchase of certain items are exempt from the 5.25% state sales and use tax. Local and special district sales and use taxes continue to apply as do the taxes for the Public Safety Fund and the Local Revenue Fund. The six partial exemptions are:

- Teleproduction or Other Postproduction Service Equipment (Teleproduction)
- Farm Equipment and Machinery (Farm Equip.)
- Diesel Fuel Used in Farming Activities or Food Processing (Diesel Fuel)
- Timber Harvesting Equipment and Machinery (Timber)
- Racehorse Breeding Stock (Racehorse)
- Rural Investment Tax Exemption (Rural Invest.)

In order for a taxpayer to claim a partial exemption, it must report the amount that is subject to the partial exemption. For fiscal year 2004-05, the amount of transactions subject to the partial exemption was as follows:

Teleproduction	\$ 319,947,000
Farm Equip.	1,854,161,000
Diesel Fuel	611,067,000
Timber	38,101,000
Racehorse	3,366,000
Rural Invest.*	0
<b>Total</b>	<b>\$2,826,642,000</b>

\* To date no exemptions have been claimed under this provision.

Revenue Estimate

Revenue Summary

In order to comply with the Streamlined Sales and Use Tax Agreement (SSUTA), the state would have two options regarding these partial exemptions. The state could decide to either make these full exemptions or make these transactions fully taxable. Currently these transactions are exempt from the 5% State General Fund rate and the 0.25% Fiscal Recovery Fund rate. These transactions are currently subject to the 0.5% Local Revenue Fund, the 0.5% Public Safety Fund, the 1% Local Bradley-Burns rate and the various special districts rates.

Fully Exempt

If these transactions were to become fully exempt, there would be a local sales and use tax revenue loss as follows:

	<u>Revenue Loss</u>
Teleproduction	\$ 8,575,000
Farm Equip.	49,692,000
Diesel Fuel	16,376,000
Timber	1,022,000
Racehorse	91,000
Rural Invest.	0
Total	\$ 75,756,000

The revenue loss by fund would be as follows:

	<u>Revenue Loss</u>			
	<u>Local Revenue Fund</u>	<u>Public Safety Fund</u>	<u>Bradley-Burns</u>	<u>Special Districts</u>
Teleproduction	\$ 1,600,000	\$ 1,600,000	\$ 3,199,000	\$ 2,176,000
Farm Equip.	9,271,000	9,271,000	18,542,000	12,608,000
Diesel Fuel	3,055,000	3,055,000	6,111,000	4,155,000
Timber	191,000	191,000	381,000	259,000
Racehorse	17,000	17,000	34,000	23,000
Rural Invest.	0	0	0	0
Total	\$14,134,000	\$14,134,000	\$28,267,000	\$19,221,000

Revenue Estimate

**Fully Taxable**

If these transactions were to become fully taxable, there would be a state sales and use tax revenue gain as follows:

	Revenue Gain		Total
	State General Fund	Fiscal Recovery Fund	
Teleproduction	\$ 15,997,000	\$ 800,000	\$ 16,797,000
Farm Equip.	92,708,000	4,635,000	97,343,000
Diesel Fuel	30,553,000	1,528,000	32,081,000
Timber	1,905,000	95,000	2,000,000
Racehorse	168,000	8,000	176,000
Rural Invest.	0	0	0
<b>Total</b>	<b>\$141,331,000</b>	<b>\$ 7,066,000</b>	<b>\$148,397,000</b>

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