



Each year, new legislation is introduced in the Congress and in Sacramento that have impacts on our local taxes, especially utility users' taxes (UUT). The positions that we recommend, and our client cities invariably support, are based on certain guiding principles relating to fair and efficient local taxation. We would like to share with you those principles and how they pertain to existing laws and proposed laws.

GUIDING PRINCIPLES OF LOCAL TAXATION

Fairness: Treat similar services and taxpayers the same by using technology-neutral definitions. In doing so, you will have a broader tax base with a lower tax rate for all.

Democracy and Local Control: By California law, the voters must approve local taxes (majority vote for general taxes and 2/3 vote for special taxes). State and federal laws should not interfere with the voters' decision to impose local taxes on themselves in order to pay for local services.

Ease of Administration: Where possible, tax jurisdictions should adopt procedures that achieve efficiency and ease of administration. State and federal laws should facilitate those goals.

Examples of existing and proposed state and federal laws that encourage ease of administration and tax fairness:

- **Proposed state law requiring retail collection of state and local taxes on prepaid wireless:** AB 1717 would require retailers to collect state and local taxes on prepaid wireless services, and remit to the State Board of Equalization (BOE). The BOE would remit the local tax back to the local jurisdictions.
- **Existing federal law establishing "sourcing" rule for wireless services:** The Mobile Sourcing Act solves an important tax issue relating to the mobile nature of wireless communications. It assigns the tax based on the "place of primary use". Most California UUT ordinances follow this common sense rule.
- **Proposed federal law establishing "sourcing" rule for VoIP:** Like the federal sourcing rule for wireless, a similar sourcing rule based on "place of primary use" is needed for "nomadic" VoIP. Most California UUT ordinances follow this common sense rule. There is no such proposed law yet.
- **Proposed federal law establishing nexus for on-line sales:** The Marketplace Fairness Act would establish nexus rule requiring collection of state and local taxes on on-line sales of services and products.

Existing and proposed federal laws that do not follow these principles:

- **Existing federal moratorium on state and local taxes on "internet access", including broadband networks:** It violates two principles. It is unfair because it treats some states differently than others (it grandfathers a number of states from the moratorium); it is unfair because it treats broadband networks differently than traditional local networks, which are being replaced by the broadband networks. It violates the "democratic" principle by ignoring the majority wishes of local voters who approve of treating all telecommunication networks the same. The current moratorium on internet access expires in November 2014. MuniServices encourages any final legislation that allows "voter approved local taxes" on all communications networks, including broadband. (HR 434)
- **Proposed federal moratorium on new or increased state or local taxes on wireless services:** Without exception language for local voter approved taxes, it would violate the "democratic" principle of honoring the majority decision of local voters who vote for new or increased local wireless taxes. The current bills have such language, and would not violate this "democratic principle. (HR 2309)



- **Existing federal excise tax on telecommunications:** This law is now interpreted to apply only to local telephone service, and not to wireless, VoIP or any long distance. It violates the rule of fairness and should be repealed.
- **Existing federal prohibition of state or local tax on “direct broadcast satellite” or DBS (e.g., Direct TV):** This law violates the rule of fairness as it treats users of satellite TV different than users of CATV or internet TV, even though the video services are the same. It should be repealed so that all users of video programming will be treated the same under the local UUT ordinances.

The principles noted above were developed out of meetings with an informal group of stakeholders (UUT Advisory Group) to study last year’s AB 300 (Perea) in California. The purpose of this group was to study AB 300, to ask questions and seek answers, and to develop consensus positions on key issues. AB 1717 (Perea), as introduced, is nearly identical to AB 300 which was vetoed.

PREPAID WIRELESS REVENUES & GUIDING PRINCIPLES FOR A STATE COLLECTION MECHANISM

The following was prepared as a discussion starting point, with respect to AB 1717. Governor Brown indicated in his veto message that he encourages the author to partner with the local governments and State Agencies affected by these revenues to craft a bill with a more cost effective solution. For nearly 4 years, MuniServices has engaged in discussions with stakeholders for a solution to help clients collect the prepaid wireless revenues. With the introduction of AB 1717, our team will continue to work with stakeholders to develop a bill that provides the correct and cost-effective mechanism for collecting these important revenues. Approximately 140 cities and two counties have a UUT in place on telecommunications and we will continue to work and communicate closely with our local government agency clients for a solution.

The bill was referred to the Assembly Utilities and Commerce Committee, and Assembly Revenue and Taxation. A formal date for the first hearing has not been set. Please contact Fran Mancia at 559-288-7296 or Fran.Mancia@MuniServices.com, or Donald H. Maynor, Esq. at 650-327-2894 or maynor1@comcast.net with any questions or comments regarding the below.

Why a statute is necessary to collect existing voter-approved revenues from prepaid wireless

Many California cities and counties impose a local utility users tax (or UUT) on the “users” of electricity, gas, telecommunications, video, water, and/or garbage services. These local taxes are imposed on the end-users, and are typically collected by the utility service provider. All local taxes must be approved by the voters according to the California Constitution (Proposition 218). Cities and counties that impose a utility users tax (UUT) on the use of wireless telecommunications are losing revenue each year as a result of more and more wireless customers switching from “contracts” to lower cost prepaid wireless.

Unlike a statewide tax or fee, the UUT varies from jurisdiction to jurisdiction. It would, therefore, be impossible for the service provider to “impute” and collect a statewide UUT on all of its wholesale sales without imposing the tax in non-UUT jurisdictions, and arguably violating Proposition 218.

The difference between prepaid and postpaid

UUT is usually collected by the service providers from postpaid or contract customers, by including the UUT on the customers’ monthly invoices. However, with prepaid wireless, there is no contract and no monthly invoices, and the service is often sold by retailers to the users (e.g., Walmart, Target, etc.), rather than the service providers. These “lost tax revenues” are increasing as prepaid wireless is growing rapidly - with over 50% of all new wireless sales being prepaid. Prepaid wireless currently represents about 30% of the wireless market today, and its share of the wireless market is expected to continue to grow.

***Collecting, remitting, processing the revenues***

AB 1717 solves the collection problem by requiring California retailers to collect the local UUT at the same time that it collects the sales tax on its other retail products, based on the point of sale (whether from a store or over the internet). The local tax would be remitted to the BOE at the same time that the retailer remits its sales taxes to the BOE. The BOE would distribute the revenues to the locals. AB 1717 could also be used as a mechanism for collecting the state 911 and CPUC surcharges, as similar laws have been enacted in many other states.

Projected costs related to implementing a mechanism

The cost of administration will depend on whether, and how much, compensation is paid to the retailers, and the cost to the BOE of modifying its existing sales tax software to include the individual tax rates for the local jurisdictions. The BOE also would incur costs to maintain an informational website and to include prepaid wireless as part of its regular compliance activities. Any retailer compensation (“vendor’s comp”) and the BOE cost would be deducted from the collected taxes, as in the case of sales taxes. The local jurisdictions, however, would continue to retain all other tax administration responsibilities (e.g., tax refunds, exemption administration, legal defense of ordinance, etc.). The BOE’s cost estimates for AB 1717, at the time of print, have not been released.

Achieving administrative ease and efficiency

The BOE would use much of its existing procedures, compliance tools, and software for sales taxes to collect and administer the prepaid wireless taxes. For administrative ease, however, the number of different UUT rates would be reduced to eight tiers, with almost no city losing more than ½% from its existing rate.

Other important provisions including sourcing rules and more

The bill would address other important issues, including the taxation of other products (e.g., data) that may be bundled or sold with a prepaid wireless purchase. It would establish sourcing rules and rebuttable presumptions for assigning the tax to the correct jurisdiction based on point of sale, and other industry-followed criteria.