

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Reallocation
of Local Tax Under the Uniform Local Sales
and Use Tax Law of:
CITIES OF LOS ANGELES, ROSEVILLE,
SAN DIEGO, AND SANTA CLARA
Petitioner

Case ID 422182

Retailer: Seller of customized computer systems
Date of Knowledge: October 13, 2004¹
Allocation period: January 1, 2004 – June 30, 2010²
Amount in Dispute: \$598,216³
Notification required: City of Huntington Beach

UNRESOLVED ISSUE

Whether the retailer incorrectly allocated the local sales tax to the headquarters office located in Huntington Beach. We conclude there is no basis upon which to reallocate the local tax revenue.

The retailer sells customized computer systems, and its corporate headquarters is located in Huntington Beach. During the period at issue, the retailer maintained numerous offices in California, including “satellite offices” utilized by sales personnel in Los Angeles, Roseville (closed effective June 30, 2005), San Diego, and Santa Clara (closed effective October 31, 2006). The retailer considers the

¹ This is the date the petitions were received by the Sales and Use Tax Department, which is the date of knowledge under California Code of Regulations, title 18, section 1807, subdivision (a)(5).

² Where a retailer remains engaged in the same activities covered by the petition(s), as is the case here, we regard the allocation period as extending through the end of the last quarter for which a return is due prior to the Board hearing.

³ This figure is based on the retailer’s actual local tax reported to the City of Huntington Beach, which is the amount of revenue that city would lose if these petitions were granted. Thus, if petitioners were to prevail, this amount would be reallocated to petitioners as follows: \$162,018 to the City of Los Angeles, \$8,694 to the City of Roseville, \$52,750 to the City of San Diego, and \$374,754 to the City of Santa Clara. In addition, a November 3, 2008 date of knowledge for the City of Rocklin and the City of Sunnyvale was established by petitioners’ representative in its pre-conference submission indicating that the retailer’s Roseville location moved to Rocklin (effective July 1, 2005) and the retailer’s Santa Clara location moved to Sunnyvale (effective November 1, 2006). Thus, if petitioners were to prevail, the Department would also reallocate \$376,651 from the City of Huntington Beach for the periods January 1, 2008, through June 30, 2010, as follows: \$14,829 to the City of Rocklin and \$361,822 to the City of Sunnyvale.

STATE BOARD OF EQUALIZATION
UNIFORM LOCAL SALES AND USE TAX APPEAL

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1 local tax on sales to California customers as sales tax, and it regards the headquarters office as the
2 place where these sales are principally negotiated. Therefore, the retailer considers Huntington Beach
3 to be the place of sale and directly allocates the local sales tax to that city.

4 Petitioners assert that sales were principally negotiated at the retailer’s satellite offices rather
5 than the headquarters office.⁴ The Sales and Use Tax Department (Department) determined that the
6 retailer’s sales were principally negotiated at the headquarters office, concluded that a reallocation was
7 not warranted, and referred the case to the Appeals Division. At the appeals conference, the
8 Department orally changed its position and recommended granting the petitions. However, because
9 we concluded that the Department’s concession was based on inadequate facts and analysis, and in
10 order to reach the correct result regarding allocation of the local taxes, we retained jurisdiction to issue
11 a Decision and Recommendation (D&R).

12 In its post-conference submission and after review of additional information provided by the
13 retailer’s Chief Financial Officer, the Department concluded that outside sales representatives at the
14 satellite offices made the initial contact with the retailer, determined the customer’s needs, and then
15 provided the customer a proposal to sell property to the customer in accord with its needs. The
16 Department opined that these functions are the actions of greatest importance involved in the sales in
17 dispute. On that basis, the Department asserted that the “principal negotiations,” occurred at the
18 satellite offices, and those offices were the places of sale for purposes of allocating the local sales tax.⁵

19 Likewise, petitioners contend that the sales in dispute are principally negotiated by outside
20 sales representatives. Petitioners rely on various Business Taxes Law Guide (BTLG) annotations⁶ to
21 support their assertion that principal negotiations normally occur at a field sales office where sales
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24 ⁴ The same petitioners filed similar petitions for reallocation of local sales taxes in 2003, which were granted by the Sales
25 and Use Tax Department. The City of Huntington Beach did not file an appeal of that decision, and the decision became
26 final. The petitions at issue here were filed after petitioners became aware that the retailer was again allocating its local
27 sales taxes to the City of Huntington Beach.

28 ⁵ In an email sent August 21, 2009, the Department advised that it now agrees with the recommendation of the D&R that
the principal negotiations occurred at the headquarters office.

⁶ The specific annotations are listed in the D&R. Annotations are summaries of legal opinions by the Board’s attorneys,
and are intended as research tools to provide guidance regarding the interpretation of the law with respect to specific factual
situations; annotations do not have the force and effect of law. (Cal. Code Regs., tit. 18, § 5700, subs. (a)(1), (c)(2).)

1 personnel are assigned to perform such activities as contacting customers, making presentations, and
2 soliciting orders.

3 As relevant here, transactions that are subject to the local sales tax must be allocated to the
4 jurisdiction of the place where the sale is regarded as having been consummated, and the sale is
5 regarded as having been consummated at the place of business of the retailer. (Rev. & Tax. Code
6 § 7205). If a retailer has more than one place of business in this state which participate in the sale, as
7 here, the sale occurs at the place of business where the principal negotiations are carried on. (Cal.
8 Code of Regs., tit. 18, § (Regulation) 1802, subd. (a)(2)(B).) We find this means that the place of sale
9 is the location of principal contact for purposes of setting the terms of the contract (Cal. Code Regs.,
10 tit. 18, § 1802, subd. (a)(2)(B)), and the location taking the order is presumed to be that location (see,
11 e.g., BTLG annots. 710.0009 (07/10/91), 710.0012 (12/28/90)) unless the facts show that the location
12 of the principal contact is another location (see, e.g., BTLG annot. 701.0005 (12/18/92)).

13 There is no dispute that both the headquarters office and a satellite office participate in the sales
14 at issue. The available evidence indicates that contact with a customer is initially made by an outside
15 sales representative. Further, the outside sales representative apparently maintains contact with the
16 customer throughout the sale. However, there is also no dispute that a quote is prepared and sent to the
17 customer directly by an inside sales representative (from the headquarters in Huntington Beach). We
18 understand that the outside sales representatives do not quote prices to customers, and the retailer
19 keeps this proprietary information confidential, limiting its disclosure to inside sales representatives
20 and other personnel at headquarters. Purchase orders prepared by the customers are sent electronically
21 to and reviewed by an inside sales representative at the headquarters office who compares each
22 purchase order to the original quote, prequalifies the customer, and determines whether any changes
23 are needed to pricing, parts, quantity, or terms; and, the inside sales representative then sends an
24 invoice to the customer. We also understand that customers sometimes inadvertently send purchase
25 orders to the outside sales representatives, who merely forward the purchase orders to the headquarters
26 office.

27 Based on the foregoing and regardless of where the order was received, we find the available
28 evidence supports the conclusion that the principal negotiations occur at the headquarters office

1 because that is the primary point of communication between the retailer and the customer for purposes
2 of setting the terms of the contract. The evidence indicates that the retailer's satellite offices did not
3 discuss the contract terms with the customers. Although this is a difficult case because there is more
4 than one point of contact between the retailer and the customers, and the facts are not clear, the
5 decision turns on the contact made for purposes of setting the terms of the contract and not on the
6 contact made to determine a customer's needs. Neither the Department nor petitioners have shown
7 that any contact made with the customers by the outside sales representatives includes setting the price
8 or other terms of the contract. Since the evidence does not establish that the place of sale was other
9 than the headquarters office, there is no basis upon which to reallocate the local sales tax to petitioners.
10 (Cal. Code Regs., tit. 18, § 1807, subds. (b)(2), (d)(5).)

11 After the D&R was issued, petitioners filed a Request for Reconsideration asserting that a tax-
12 sharing agreement between the City of Huntington Beach and the retailer impacts the weight that
13 should be accorded to the statements by the retailer's headquarters' staff, arguing such statements are
14 less credible than the statements allegedly made to petitioners by sales personnel located at the
15 retailer's satellite offices.⁷ We agree that the existence of a tax-sharing agreement requires us to more
16 closely scrutinize the credibility of any statements made by the retailer since the retailer has a direct
17 financial interest in the outcome of this dispute. The existence of such an agreement does not
18 however, modify the rules for determining a place of sale or the allocation of local sales tax revenues.

19 Here, despite the existence of the Tax Sharing Agreement, the best available evidence
20 addressing the critical issue of which location has the principal contact for purposes of setting the
21 terms of the contract is information and documentation provided in written statements by Douglas D.
22 Cicione, the retailer's attorney. We find that Mr. Cicione's written statements provide comprehensive
23 details and are therefore more credible than the ambiguous and unsupported oral statements
24 purportedly made by other staff of the retailer. We also are not persuaded by petitioners' assertion that
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26 ⁷ The retailer entered into a Sales Tax Agreement with the City of Huntington Beach that provides a rebate to the retailer of
27 the local sales tax revenues it allocates to Huntington Beach, under specified conditions, not to exceed \$200,000 per year
28 for a ten year period, expiring on June 30, 2010. Apparently, the retailer was contemplating moving its headquarters office
to another location, and the city offered the rebate to encourage it to remain in Huntington Beach.

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the purported oral statements should be given more evidentiary weight because: (1) they are consistent with some of the retailer’s previous local tax reallocations, and (2) there is no evidence of a change in the sales procedures. While petitioners have identified one possible reason for the difference between the previous reallocations and the allocation here (a change in sales procedures), we find there could be other explanations, such as the correction of errors in the earlier periods.

We can only recommend granting these petitions if a preponderance of the evidence establishes that the retailer’s allocation of local tax was incorrect. Based on the information provided by Mr. Cicione, we conclude that the principal negotiations regarding the terms of the contract occurred at the retailer’s headquarters in Huntington Beach. Thus, our conclusion remains that there is no basis upon which to recommend reallocation of the local tax revenue.

OTHER DEVELOPMENTS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III