

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petitions for Reallocation)
of Local Tax Under the Uniform Local Sales)
and Use Tax Law of:)
)
CITIES OF SANTA FE SPRINGS &) Case ID 468761
FILLMORE)
)
Petitioners¹)

Retailer: Seller of medical supplies
Date of Knowledge: March 31, 2006 (Santa Fe Springs)
March 27, 2008 (Fillmore)
Disputed allocation period: October 1, 2005 – March 31, 2007
Amount in Dispute: \$393,975
Notification required: None²

This matter was scheduled for Board hearing on September 20, 2011, but was postponed at Fillmore’s request because the Fillmore city attorney was not available that day.

BACKGROUND

The retailer sells medical supplies to health care facilities (Retailer) and its corporate headquarters is located in Santa Fe Springs, which includes a warehouse facility. It also maintains a warehouse in Sacramento and at other locations outside California. Retailer takes orders at the Santa Fe Springs headquarters and delivers its goods for the sales at issue to California customers from the inventory maintained at the California warehouses. On January 1, 2005, Retailer began reporting its local sales tax to the office of an unrelated third party located in Fillmore. Fillmore pays that unrelated third party 85 percent of the local sales tax it receives from Retailer, and retains only 15 percent.

¹ Even though Fillmore is a petitioner, to avoid confusion, when we refer to petitioner, we refer to Santa Fe Springs as opposed to Fillmore, whom we refer to by name.
² The amount in dispute will either be retained by Fillmore or reallocated to Santa Fe Springs. No other jurisdictions are involved.

1 The petition filed by Santa Fe Springs was received by the Sales and Use Tax Department's
2 Allocation Group (AG) on March 31, 2006, and was initially denied by AG on April 19, 2007.
3 Petitioner provided additional information, in writing, to AG on April 26, 2007. While AG was
4 investigating the Santa Fe Springs petition, the Sales and Use Tax Department's Local Revenue
5 Allocation Section (LRAS) operationally documented a new date of knowledge on March 27, 2008.
6 On August 4, 2008, AG notified Fillmore that a misallocation had occurred and that it intended to
7 deallocate the local tax distributed to Fillmore (and hold any further distributions beginning January 1,
8 2008). In response, Fillmore filed a timely petition on October 3, 2008. AG issued its decision on
9 October 27, 2008, and a supplemental decision on April 23, 2009, granting petitioner's petition and
10 denying Fillmore's petition. Fillmore timely appealed on June 24, 2009. An appeals conference was
11 held on March 17, 2010, and we recommended in our Decision and Recommendation, issued on March
12 24, 2011, that the Santa Fe Springs petition be granted and the Fillmore petition be denied as to local
13 tax incurred for the periods beginning October 1, 2005. On May 11, 2011, Fillmore requested a
14 hearing only as to issue 2 (Date of Knowledge).

15 UNRESOLVED ISSUE

16 Whether the date of knowledge is March 31, 2006, or March 27, 2008. We conclude that the
17 date of knowledge is March 31, 2006.

18 Revenue and Taxation Code section 7209 operates as a statute of limitations barring
19 redistribution of local taxes distributed more than two quarters prior to the quarter in which the Board
20 obtains knowledge of the improper distribution.³ California Code of Regulations, section (Regulation)
21 1807 interprets and implements the provisions of section 7209, and as first adopted on August 1, 2002,
22 governed the local tax reallocation procedures prior to the September 10, 2008 effective date of
23 amendments to Regulation 1807. Since the Santa Fe Spring's petition was received on March 31,
24 2006, former Regulation 1807 governed the procedures for the filing of that petition.

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27 ³ We note that distributions are made after the quarter for which they are paid, so this rule generally translates into three
28 quarters if counting from the quarters for which the returns were filed.

1 Fillmore appears to challenge the validity of the Santa Fe Springs petition, apparently arguing
2 that it does not comply with the provisions of former Regulation 1807, subdivision (a)(2), because it
3 did not contain sufficient factual data to support the probability that the local tax had been erroneously
4 allocated. Fillmore argues that the Santa Fe Springs petition should be disregarded because a date of
5 knowledge is not established until the Board has actual knowledge of a misallocation and that
6 “knowledge” occurs when AG evaluates and subjectively determines the probability of an improper
7 distribution. For example, on April 19, 2007, when AG initially denied the Santa Fe Springs petition,
8 Fillmore asserts AG did not believe there was any misallocation. Fillmore argues that the date of
9 knowledge is the first date on which any allocations were considered improper by AG or LRAS. Here,
10 Fillmore asserts that date is March 27, 2008, when LRAS operationally documented in its internal
11 form that it questioned whether the local tax Retailer allocated to Fillmore should instead be allocated
12 to Santa Fe Springs. Fillmore is wrong.

13 The statutory language of section 7209 neither defines “knowledge of the improper
14 distribution” nor indicates how such knowledge is obtained. However, former Regulation 1807,
15 subdivisions (a) and (b)(2), make it clear that the date of knowledge is established upon receipt of a
16 petition, containing specified information, unless such petition is rejected by AG. Former subdivisions
17 (c)(1) and (d)(3) explain that a jurisdiction can provide additional information without jeopardizing the
18 date of knowledge established by the petition. Thus, while AG must review the petition for content,
19 whether AG has a subjective or objective belief that a misallocation has occurred is not the test. That
20 is, the petition need not contain facts that AG believes are true in order to provide the “knowledge”
21 required by section 7209, but rather must simply allege facts that *the petitioner* believes are more
22 likely than not to indicate an improper distribution was made.⁴ All that is needed is for AG to know of
23 the facts that a petitioner relies on in questioning the probability of a misallocation. It is not “actual
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26 ⁴ Similarly, an employee of the Board has knowledge of facts when he or she finds them in the Board’s records and
27 questions the correctness of the local tax allocation (i.e., operationally documenting a date of knowledge). However, the
28 date of knowledge that Fillmore challenges is *not* an operationally document dated of knowledge, but rather, it is a date of
knowledge based on a petition.

1 knowledge of a misallocation,” as Fillmore argues, but rather “actual knowledge of the facts” that is
2 required under section 7209.

3 Here, the petition of Santa Fe Springs was accepted as a valid petition when received by AG on
4 March 31, 2006, as it included all the elements specified in former Regulation 1807, subdivision (a)(2).
5 (Former Cal. Code Regs., tit. 18, § 1807, subd. (b)(2).) That is, the petition states: Retailer’s name,
6 owner’s name, address, and permit number; Retailer sells medical supplies; Retailer’s allocation of
7 local tax is being questioned because the Santa Fe Springs location is a warehouse and order desk
8 where sales occurred; the name of Retailer’s employee contacted by Santa Fe Springs; and, that all
9 applicable quarters are being questioned. Accordingly, the Santa Fe Springs petition establishes a date
10 of knowledge of March 31, 2006. (Former Cal. Code Regs., tit. 18, § 1807, subd. (a)(3).) The fact that
11 AG denied the Santa Fe Springs’s petition on April 19, 2007, or the fact that LRAS operationally
12 documented a later date of knowledge of March 27, 2008, cannot change the March 31, 2006 date of
13 knowledge since AG’s denial did not close the petition, which is not closed until the appeals process
14 has been completed. Santa Fe Springs timely objected to the denial in its April 26, 2007 letter,
15 providing additional information in accordance with former Regulation 1807, subdivision (c)(1). Nor
16 does the date of knowledge change based on a favorable or unfavorable decision by AG or LRAS.

17 Since the petition’s March 31, 2006 date of knowledge is earlier than LRAS’s operationally
18 documented March 27, 2008 date of knowledge, we find that March 31, 2006, is the date of knowledge
19 for purposes of this appeal. (Former Cal. Code Regs., tit. 18, § 1807, subd. (a)(3).) Accordingly, we
20 recommend that the Santa Fe Springs petition be granted and the Fillmore petition be denied as to
21 local tax incurred for the periods beginning October 1, 2005.

22 **RESOLVED ISSUE**

23 None of the parties requested a Board hearing as to the D&R’s findings that the beginning of
24 the allocation period is October 1, 2005 (periods prior to October 1, 2005, are barred) or that the place
25 of sale for the subject transactions is Santa Fe Springs. According, these issues are resolved.

26 **OTHER DEVELOPMENTS**

27 None.

28 Summary prepared by Trecia M. Nienow, Tax Counsel IV