

**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: )  
)  
CITY OF FILLMORE ) Case ID 466375  
)  
Petitioner )

Taxpayer: Seller of uniforms and other related items  
Date of Knowledge: March 27, 2008  
Allocation period: April 1, 2007 - Current  
Amount in Dispute: \$695,898<sup>1</sup>  
Notification required: The Cities of Burbank, Fresno, and Los Angeles

Taxpayer reported the tax at issue to petitioner as local sales tax. Upon investigation, the Sales and Use Tax Department (Department) determined that was incorrect and informed petitioner of Taxpayer's mistake. Petitioner disputed that finding by filing the present petition. This appeal was scheduled for Board hearing on September 20, 2011, but was postponed at petitioner's request because its city attorney was not available that day.

**UNRESOLVED ISSUE**

Whether Taxpayer incorrectly reported the local tax as sales tax to the office located in Fillmore. We conclude that Taxpayer incorrectly reported the local tax as sales tax since the sales occurred outside California, and that all amounts reported by Taxpayer to petitioner should therefore be reallocated as local use tax to the countywide pools of the places of use.

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<sup>1</sup> This is the amount that Taxpayer reported to petitioner from April 1, 2007 through June 30, 2011. The amounts reported from April 1, 2007 through December 31, 2007 (\$146,293), were distributed to petitioner, however, amounts reported from January 1, 2008 through June 30, 2011 (\$549,605), have been held in suspense until this matter is resolved. This means that if the petition is denied, Fillmore loses \$146,293, and that amount plus \$549,605 will be distributed to the following countywide pools: Alameda (\$158,195), Contra Costa (\$167), Fresno (\$98,936), Los Angeles (\$278,362), Orange (\$10,744), Riverside (\$45,426), Sacramento (\$95,202), San Diego (\$392), Santa Clara (\$446), Shasta (\$7,690), Stanislaus (\$259), San Mateo (\$79). However, if the petition is granted, petitioner keeps the \$146,293 and receives the \$549,605 held in suspense.

1 Taxpayer sells items such as uniforms to its parent, Taxpayer's sole customer. Parent rents and  
2 cleans such items for its California customers.<sup>2</sup> Taxpayer entered into a Master Sale Agreement with  
3 Parent which obligates Parent to make purchases of at least \$10,000, but not more than \$3,000,000 per  
4 month. Taxpayer receives orders and maintains inventory sold to Parent outside the state, from which  
5 goods are shipped by common carrier to Parent's California facilities. Taxpayer shares staff with  
6 Parent at a headquarters location in Burbank, California. Taxpayer subleases office space in Fillmore  
7 from an unrelated third party (UTP), which office petitioner asserts is where the Master Sale  
8 Agreement was principally negotiated and should be regarded as a place of business of Taxpayer for  
9 purposes of allocating local sales tax to petitioner. In conjunction with that sublease, Taxpayer entered  
10 into an Agency Agreement with UTP on December 1, 2003. The Agency Agreement was entered into  
11 in connection with an Economic Development Agreement that UTP had previously entered into with  
12 the petitioner on March 2, 2003. Under these agreements, petitioner pays UTP 85 percent of the local  
13 sales tax it receives from Taxpayer and retains only 15 percent. From its 85 percent share, UTP pays  
14 Taxpayer between 30 and 50 percent of the local sales tax Taxpayer reports to petitioner, and UTP  
15 retains the remainder (i.e., 35 to 55 percent). Taxpayer reported the sales in dispute as sales tax and  
16 directly allocated the local tax to petitioner, thereby gaining the right to 30 to 50 percent of that tax as a  
17 rebate (if the allocation is upheld), based on the view that these sales were principally negotiated at the  
18 Fillmore office which was thus the place of sale.

19 The Department and Burbank contend that the sales made by Taxpayer are subject to use tax  
20 because the sales occurred outside California when Taxpayer tendered the goods to the common carrier  
21 for shipment to Parent's California facilities. (Cal. U. Com. Code, § 2401; Cal. Code Regs., tit. 18, §  
22 1628, subd. (b)(3)(D).) Thus, the Department and Burbank conclude that the local tax should be  
23 reallocated as local use tax to the countywide pools of the places of use. Petitioner contends that the  
24 sales made by Taxpayer to Parent are subject to sales tax because such sales occurred inside California  
25 in accordance with the terms of the Master Sale Agreement, asserting that the Master Sale Agreement

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27 <sup>2</sup> Parent is a consumer of the items it purchases from Taxpayer under California Code of Regulations, title 18, section 1506,  
28 subdivision (c)(1) and (2). Thus, the Taxpayer's sales to, and purchases by Parent are subject to tax.

1 says no sale occurs until title passes and that title does not pass until the goods are delivered at Parent's  
2 California facilities. Petitioner argues that such statements effectively require that Taxpayer deliver  
3 goods to Parent at its California facilities and as such, expressly requires delivery at destination in  
4 accordance with California Code of Regulations, title 18, section (Regulation) 1628, subdivision  
5 (b)(3)(D). Thus, petitioner concludes that the local tax was properly allocated to it as local sales tax.

6 A sale is subject to sales tax only if that sale occurs in California and there is some participation  
7 in the sale by a California location of the seller. (Cal. Code Regs., tit. 18, § 1620, subd. (a)(2)(A).)  
8 Where either or both of these conditions are not satisfied, the applicable tax is use tax. Thus, without  
9 regard to any participation in the transaction by the seller within California, if the sale occurs outside  
10 California, the sales tax cannot apply. (Rev. & Tax. Code, §§ 6006, subd. (a), 6010, subd. (a), 6010.5,  
11 6051, 6201; Cal Code Regs., tit. 18, §1620, subd. (a)(2)(A).) The same rules are applicable to  
12 determine whether the local tax is sales tax or use tax. (Rev. & Tax. Code, §§ 7202, 7303; Cal. Code  
13 Regs., tit. 18, § 1803, subd. (a)(1).) In order to show that the local sales tax applied to the subject  
14 sales, petitioner must establish that the sales occurred in California. If it cannot make this showing, the  
15 applicable tax is use tax and reallocation is warranted.

16 Regulation 1628, subdivision (b)(3)(D) explains that title to goods can pass and the sale can  
17 occur *prior* to delivery if the contract explicitly so provides, but cannot pass any later than when the  
18 seller completes its performance with respect to physical delivery of the goods, any retention or  
19 reservation by the seller of title after that point being limited in effect to a security interest. (Cal. U.  
20 Com. Code, § 2401.) That is, the parties are free to expressly agree when title passes (and the sale  
21 occurs) up to the time the seller completes its duties with reference to physical delivery of the goods.  
22 If the seller is required to send the goods to the purchaser but is not required to deliver them at  
23 destination, usually pursuant to a F.O.B. destination provision, the seller completes its performance  
24 with respect to physical delivery at the time and place the seller delivers the property to the common  
25 carrier for shipment. (Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D).) For example, if a contract that  
26 is silent on the seller's delivery obligations provides for passage of title at destination, title passes at  
27 the time of shipment and the retention of title after that time is merely as security. (Cal. U. Com.  
28 Code, § 2401; Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D).)

1 Here, while the Master Sale Agreement provides for shipment of the goods to California, it  
2 does not require Taxpayer to deliver the goods at destination. (See Cal. U. Com. Code, § 2401, subd.  
3 (2)(a).) Therefore, title to the goods passed, and the sales occurred, at the out-of-state shipping point.  
4 (Rev. & Tax. Code, § 6010, subd. (a); Cal. U. Com. Code, § 2401; Cal. Code Regs., tit. 18, § 1628,  
5 subd. (b)(3)(D) (since the Master Sale Agreement states that title passed upon delivery, Taxpayer  
6 retained a security interest in the goods until that time, but the holding of a security interest is not  
7 relevant to the proper allocation of local tax).) We thus conclude that all sales occurred at the time and  
8 place of shipment outside California, and that the applicable tax is use tax.<sup>3</sup> (Rev. & Tax. Code, §§  
9 6201, 7203; Cal. Code Regs., tit. 18, § 1803.) Accordingly, we recommend that the petition be denied,  
10 and that the local tax reported as sales tax to petitioner be reallocated as use tax to the countywide  
11 pools of the places of use in accordance with the audit performed by the Department.

12 **OTHER DEVELOPMENTS**

13 None.

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15 Summary prepared by Trecia M. Nienow, Tax Counsel IV  
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26 <sup>3</sup> As explained in the D&R, even if the sales had occurred inside California, petitioner would not be entitled to a direct  
27 allocation unless it could establish that the Fillmore location was a business location of Taxpayer that required a seller's  
28 permit.