

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION**

**PETITION FOR REHEARING**

In the Matter of the Petition for Reallocation )  
of Local Tax Under the Uniform Local Sales )  
and Use Tax Law of: )  
 )  
**CITY OF UNION CITY** )  
 )  
Petitioner )

Case ID 469296

Taxpayer: Seller of carpets  
Date of knowledge: April 24, 1997  
Allocation Period: October 1, 1996 – September 30, 2009<sup>1</sup>  
Estimated Amount in dispute: \$1,607,500

The Board heard this matter on August 31, 2009, concluding that the local sales tax should not be allocated directly to petitioner but that a portion should be reallocated indirectly to petitioner through the Alameda countywide pool. Petitioner filed a timely petition for rehearing.

**UNRESOLVED ISSUE**

**Issue:** Whether the petition for rehearing should be granted. We conclude that petitioner has simply repeated its prior arguments, raising only one new issue that is irrelevant, and that the petition for rehearing should thus be denied.

For sales where the goods were shipped to the taxpayer’s Union City location from its out-of-state warehouse, petitioner continues to argue that the local sales tax should be directly allocated to it because the Union City location was the only California location of the taxpayer who participated in the sales. We agree that these sales were subject to sales tax, but the local sales tax must be allocated to petitioner through the Alameda countywide pool (as ordered by the Board) unless the taxpayer’s Union City location was required to hold a seller’s permit. Petitioner reiterates its contention that the

<sup>1</sup> If the Board were to grant a rehearing, the reallocation period would extend through the end of the quarter during which that rehearing is held, and the amount in dispute would be recalculated accordingly.

1 Union City location should hold a seller's permit because merchandise is stored temporarily at that  
2 location before it is delivered to the customer.

3 The taxpayer does not negotiate sales at its Union City location, so a seller's permit is required  
4 for that location only if the taxpayer maintains a stock of merchandise there. The term "stock of  
5 merchandise" means inventory from which orders are fulfilled and delivered; it does not include  
6 tangible personal property that is specifically identified to a contract, packaged for delivery, and in  
7 route to the customer. Here, where the taxpayer's Union City location participated in the sale, it did so  
8 after the taxpayer withdrew the property from one of its stocks of merchandise maintained at one of its  
9 other locations, at which the property was identified to the contract and packaged and addressed for  
10 delivery to individual customers. The other location then shipped the individual packages to the Union  
11 City location from which the deliveries were made to the individual customers. Those deliveries by  
12 the Union City location were not made from a stock of merchandise maintained at that location. Thus,  
13 the Union City location is not required to hold a seller's permit.

14 Petitioner's reliance on the addition of the taxpayer's Union City location to its seller's permit  
15 on March 19, 2009, is misplaced. The Department thereafter concluded that a seller's permit was not  
16 required for this location, and thus closed out the permit for that location on October 6, 2009. As  
17 explained at the hearing, the addition of a sub-location to a seller's permit does not mean that such  
18 addition is not subject to review. Rather, if it is later determined that sub-location is not required to be  
19 permitized, as was the case here, the sub-permit issued to that sub-location will be closed. Thus, the  
20 mistaken addition of the taxpayer's Union City location to its seller's permit has been corrected, and is  
21 not relevant to the correct allocation of local tax.

22 For sales where the goods were shipped to taxpayer's Union City location from either its La  
23 Mirada or Cypress warehouse, petitioner repeats its argument that the local sales tax on such sales  
24 should be directly allocated to it because the activities performed at the La Mirada or Cypress  
25 warehouses are not taxable sales activities and because the deliveries made by employees at Union  
26 City completed the taxable sales. The facts on which petitioner relies are simply not relevant to the  
27 applicable issue of whether the Union City location principally participated in the sale such that it is  
28 regarded as the place of sale for purposes of allocating, directly or indirectly, the subject local sales tax

1 to petitioner. When the principal negotiations are conducted outside California and then more than one  
2 California location of the seller participates in the sale, as was the case for these sales, the place of sale  
3 is the California location that most participates in the sale. For such sales (where the property was  
4 removed from one of the southern California warehouse locations of the taxpayer), the activities at  
5 those locations (removing items from inventory to identify them to the contracts of sale, packaging in  
6 individual packages, labeling those packages for delivery to individual purchasers, and initiating that  
7 delivery) were more significant than the activities performed by the Union City location (delivery of  
8 the individual packages to customers). The delivery to the customer clearly is not the critical element  
9 of participation, but rather the prior steps in the transaction that makes such delivery possible. As  
10 such, for these sales, the warehouse location is the California location that most participated in the  
11 sales. Accordingly, none of the local tax from such sales should be allocated to petitioner, directly or  
12 indirectly through the countywide pool.

13           The only new issue raised by petitioner is that it believes harmful effects will result from the  
14 Board's decision. This is simply not relevant to the applicable issue of whether the Board has applied  
15 the statutes and its regulations correctly.

16           We find that none of petitioner's contentions warrant a rehearing, and we recommend that the  
17 petition for rehearing be denied.

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20 Summary prepared by Trecia M. Nienow, Tax Counsel III (Specialist)