



1 June 18, 2001, who issued its decision denying the petitions on January 14, 2004. On April 12, 2004,  
2 petitioners submitted their election to proceed under the provisions of former California Code of  
3 Regulations, title 18, section (Regulation) 1807, and timely perfected their right to a Board hearing.  
4 The Board hearing was deferred for various reasons, one of which was so that we could address new  
5 arguments made by petitioners in a Supplemental Decision and Recommendation (SD&R), which we  
6 issued on December 20, 2011.

#### 7 **UNRESOLVED ISSUE**

8 Whether all of the retailer's sales, even those shipped to its purchasers from outside this state,  
9 occurred in California and were thus subject to local sales tax rather than local use tax. We conclude  
10 that the retailer's sales were subject to local use tax.

11 The retailer whose local taxes are the subject of these petitions sold portrait pictures. It  
12 reported the disputed sales as use tax and allocated the local tax through various countywide pools of  
13 the places of use. The retailer sent the film used by the studio for the sitting to an out-of-state location  
14 to develop the proofs, which were sent to the studio. The purchasers reviewed the proofs at the studio  
15 and placed its order for those to be printed, at which time the purchaser paid some or all of the charges.  
16 The proofs were then returned to the retailer's out-of-state location to create the prints. The retailer  
17 stated that its out-of-state location shipped the prints by common carrier directly to the purchasers'  
18 homes, and that none of the prints were shipped to the studios so that the purchasers could pick them  
19 up at the studios. Petitioners assert, however, that there must have been at least some cases where the  
20 purchasers picked up the prints from the California studios because, petitioners believe, sometimes the  
21 purchasers had the option to pick up their orders at the studios or to have them shipped to their homes  
22 free of charge.

23 The Department contends that title passed and the sales occurred outside California when the  
24 retailer delivered the prints to the common carrier for shipment directly to the California purchasers,  
25 and that the local use tax was thus properly allocated. Petitioners primarily contend that, without  
26 regard to where the sales occurred, the local sales tax applies to all transactions pursuant Revenue and  
27 Taxation Code section 7205 since a California place of business of retailer participated in all of the  
28 disputed sales. Petitioners alternatively contend that the local sales tax applies because all sales did

1 occur in California, even if most were shipped by common carrier from outside this state, under: (1)  
2 UCC sections 2513 and 2606 when retailer's purchasers gained possession of the prints and completed  
3 inspection; (2) section 6006, subdivision (a) and UCC section 2106 when retailer agreed to print and  
4 ship the pictures and the purchasers paid the fee; or (3) section 6006, subdivision (f) when the  
5 purchasers received the special orders. Finally, petitioners contend that the local sales tax applies at  
6 least with respect to the sales where the prints were shipped to the studio and picked up by the  
7 purchasers from that California location.

8         The same rules applicable to determine whether the state tax is sales tax or use tax are  
9 applicable to determine the character of the local tax. (Rev. & Tax. Code, §§ 6010.5, 6051, 6201,  
10 7202, 7303; Cal. Code Regs., tit. 18, §§ 1620, subd. (a)(2)(A), 1803, subd. (a)(1).) Thus, contrary to  
11 petitioners' belief, section 7205 is not determinative of whether local sales tax applies, but rather to  
12 where the local sales tax is allocated *if* the local tax is sales tax. Thus, in order to show that the local  
13 sales tax applied to the disputed sales, petitioners *must* establish that the sales occurred in California.  
14 Since the sale and purchase of regular or special orders occur upon transfer of title or possession to the  
15 purchaser (Rev. & Tax. Code, §§ 6006, subd. (a) & (f), 6010, subd. (a) & (d)), the sale or purchase  
16 occurs at the place where the tangible personal property is located at the time (Rev. & Tax. Code, §  
17 6010.5.) The sale occurs when and where the retailer completes its performance with reference to the  
18 physical delivery of the property, without regard to any reservation by the retailer of a security interest  
19 in the property, unless the parties explicitly agree to pass title earlier. (Rev. & Tax. Code, § 6010.5,  
20 Cal. U. Com. Code, § 2401; Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D).) Here, since delivery  
21 was by common carrier from outside California, title passed and the sale occurred outside California  
22 when the retailer delivered the goods to the common carrier for shipment to the California purchasers.  
23 Regarding petitioner's belief that some of the prints may have been picked up by the purchasers at a  
24 California location of the retailer, we note that petitioner has provided no evidence showing that any  
25 purchaser picked up the goods from a California location of the retailer. Accordingly, we conclude  
26 that the local tax was properly allocated as use tax because all the sales occurred outside California and  
27 that the petitions must be denied. (Cal. U. Com. Code, § 2401; Cal. Code Regs., tit. 18, § 1628, subd.  
28 (b)(3)(D), 1807, subd. (b)(2).)

**OTHER DEVELOPMENTS**

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None.

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