

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION PETITION FOR REHEARING SUMMARY

In the Matter of the Petition for Reallocation)	
of Local Tax Under the Uniform Local Sales)	
and Use Tax Law of:)	
)	
CITY OF MILPITAS)	Case ID 571838
)	
Petitioner)	

Retailer:	Seller of computer hardware, software, and related products
Date of Knowledge:	6/30/09
Allocation period:	7/1/08 – 3/31/13 ¹
Amount in Dispute:	\$350,850
Notification required:	Cities of San Jose and Santa Clara

The Board heard this matter on May 22, 2013, concluding that with the exception of the retailer’s sales shipped from retailer’s safety stock located at the manufacturer’s facility, the local tax was properly allocated as use tax to the places of use through the respective countywide pools because manufacturer’s facility was not a place of business of retailer for retailer’s sales drop shipped by manufacturer from its own inventory. Petitioner filed a timely petition for rehearing.

UNRESOLVED ISSUE

Whether the petition for rehearing should be granted. We conclude that the petition for rehearing should be denied.

In its petition for rehearing, petitioner contends that the Board’s decision is contrary to law because: (1) the Board has not shown that the local use tax applied under California Code of Regulations, title 18, section 1803, subdivision (b); (2) the Board’s decision is inconsistent with the administration of local tax under Revenue and Taxation Code section 7224; and (3) the Board’s decision conflicts with Milpitas’s right to apply its ordinance.

¹ If the Board were to grant a rehearing, the reallocation period would extend through the end of the quarter for which a return is filed prior to the finality date of the appeal, and the amount in dispute would be recalculated accordingly.

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As explained in our analysis, we conclude that petitioner’s arguments are without merit, and we therefore recommend that the petition for rehearing be denied.

Summary prepared by Trecia M. Nienow, Tax Counsel IV