

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

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3 In the Matter of the Petition for Reallocation )  
4 of Local Tax Under the Uniform Local Sales )  
and Use Tax Law of: )  
5 CITY OF UNION CITY ) Case ID 469296  
6 Petitioner )

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8 Retailer: Seller of carpets  
9 Date of Knowledge: April 24, 1997  
10 Allocation period: October 1, 1996<sup>1</sup> – September 30, 2009  
11 Estimated Amount in Dispute: \$1,607,500<sup>2</sup>  
12 Notifications required: Cities of Fremont, Oakland, and San Jose<sup>3</sup>

**BACKGROUND**

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14 The petition in this appeal was received by the Sales and Use Tax Department (Department) on  
15 April 24, 1997. An appeals conference was held by the Local Tax Appeals Auditor within the  
16 Department, and his Decision and Recommendation denying the appeal on November 2, 2000, found  
17 that the Union City location was not a place of sale that required a seller’s permit. Petitioner timely  
18 appealed that decision to Board Management, who issued its decision denying the appeal on July 18,  
19 2001. On December 17, 2008, the Board found that petitioner’s appeal remained open and granted  
20 petitioner’s request for hearing. On May 21, 2009, we prepared an Appeals Division Analysis  
21 recommending that the petition be granted, in part, for sales where the goods were shipped to the  
22 Union City location from the retailer’s out-of-state warehouse, as explained below.

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24 <sup>1</sup> October 1, 1996, is the date when the Union City location opened.

25 <sup>2</sup> The Department calculates that the local tax distributed through the applicable countywide pools during the reallocation  
26 period for sales by the retailer where the goods were shipped to the Union City location from an out-of-state or California  
27 warehouse and then delivered to California consumers by the Union City location is \$1,628,325. The Department estimates  
28 that petitioner already received about \$14,625 of that distribution as its share of the Alameda countywide pool (the actual  
redistribution, if any, will be calculated based on the relative ratios of the distribution for the quarter prior to the quarter the  
redistribution is effected). Thus, if petitioner were to prevail on all issues, the Department estimates that the net  
redistribution to petitioner would be \$1,613,700. If, instead, our recommendation is upheld to grant a portion of the petition  
and deny the remainder, as discussed below, the Department estimates the net redistribution to petitioner would be about  
\$6,200.

**UNRESOLVED ISSUE**

**Issue:** Whether the local tax from the sales negotiated outside California and delivered by the Union City location should be reallocated directly to petitioner. We conclude that such local tax is not allocable directly to petitioner but that a portion should be reallocated indirectly to petitioner through the Alameda countywide pool.

The retailer whose local taxes are the subject of this petition sells carpet and other flooring products. The retailer is currently registered under the Board's SRZ tax program, which allows for the allocation of local tax to more than one local jurisdiction and through countywide pools. As indicated by the retailer, transactions reported and allocated through the various countywide pools include those negotiated out of state and delivered to California customers directly by an out-of-state warehouse, by one of two California warehouses (Cypress and La Mirada), by the Union City location, or, beginning January 1, 2000, by the Sacramento location. The goods delivered by the two California warehouses would have been supplied by the out-of-state warehouse or by that California warehouse, while the goods delivered by the Union City or Sacramento location would have been supplied by the out-of-state warehouse or one of the California warehouses in Cypress and La Mirada. For the periods at issue, the retailer estimates that 20 percent of the local tax reported to each countywide pool was from sales where delivery was to California customers directly from the retailer's out-of-state warehouse and that 80 percent of the local tax reported to each countywide pool was from sales where delivery was to California customers from the Cypress or La Mirada warehouse, the Union City location, or, beginning January 1, 2000, from the Sacramento location.

Petitioner notes in its opening brief that deliveries by the Union City location were made only to customers in Northern California. Based on further information obtained from the retailer, the Department has determined that petitioner is correct, and that prior to January 1, 2000, the Union City location made deliveries to purchasers in the following northern California counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas,

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<sup>3</sup> Pursuant to California Code of Regulations, title 18, section 1807, subdivision (d)(2).

1 Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta,  
2 Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.  
3 The Department further determined that, on and after January 1, 2000, a portion of this area was taken  
4 over by the Sacramento location, who made all deliveries to purchasers in the counties noted in the  
5 footnote.<sup>4</sup> Thus, on and after January 1, 2000, the location in Union City made deliveries only to  
6 purchasers in the following counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin,  
7 Mariposa, Mendocino, Merced, Monterey, Napa, San Benito, San Francisco, San Joaquin, San Mateo,  
8 Santa Clara, Santa Cruz, Siskiyou, Solano, Sonoma, Stanislaus, Trinity, and Tuolumne. Applying the  
9 80 percent factor provided by the retailer to the local tax the retailer reported to each of the applicable  
10 pools of the counties serviced by the Union City location, the Department calculates that local tax of  
11 \$1,628,325 was allocated to the applicable northern California countywide pools for sales where the  
12 Union City location delivered the purchased goods.<sup>5</sup>

13 This petition involves only local sales tax. Local sales tax is allocated to the “place of sale.”  
14 (Rev. & Tax. Code, § 7205, subd. (a).)<sup>6</sup> When the retailer has more than one place of business in this  
15 state, as here, the place of sale is determined in accordance with California Code of Regulations, title  
16 18, section (Regulation) 1802. (Rev. & Tax. Code, § 7202, subd. (b)(1).) Where only one California  
17 place of business of a retailer participates in a sale subject to sales tax, that is the place of sale. (Cal.  
18 Code Regs., tit. 18, § 1802, subd. (a)(2)(A).) Where more than one California place of business of the  
19 retailer participates in a sale subject to sales tax, subdivision (a)(2)(B) of Regulation 1802, provides:

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21 \_\_\_\_\_  
22 <sup>4</sup> Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento,  
Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba.

23 <sup>5</sup> The Appeals Division Analysis states that the applicable local tax for sales delivered by the Union City location was  
24 \$4,598,152 because the Department did not understand the applicable facts (it applied an 80 percent factor to local tax  
25 allocated to all countywide pools in California for the period 10/1/96 – 12/31/99, and a 50 percent factor to local tax  
allocated to all countywide pools in California for the period 1/1/00 – 9/30/09). Since the notices of the Board hearing were  
based on this incorrect higher amount, some of the jurisdictions that were notified of the hearing as possibly substantially  
affected jurisdictions are no longer in that category, and they have been so informed.

26 <sup>6</sup> The local tax allocated to countywide pools for the approximate 20 percent of sales delivered to California consumers  
27 directly from outside California was use tax because those sales occurred outside California. (Cal. Code Regs., tit. 18, §  
1620, subd. (a)(1).) The disputed sales delivered by the Union City location were subject to sales tax because title passed in  
28 California and the Union City location participated in the sales (and, for some, other California locations participated as  
well). (Cal. Code Regs., tit. 18, § 1620, subd. (a)(2)(A).)

1            “If a retailer has more than one place of business in this state which participate in the  
2            sale, the sale occurs at the place of business where the principal negotiations are carried  
3            on. . . .”

4            Although this provision specifies the place of sale where the principal negotiations are carried on in  
5            California and one or more other California locations also participate in the sale, it does not specify the  
6            place of sale where the principal negotiations are conducted outside California and more than one  
7            California location participates in the sale. We believe that the correct rule under such circumstances  
8            is that the place of sale is the California location that most participates in the sale.

9            On November 15, 2005, the Board adopted amendments to Regulations 1699 and 1802 which  
10            became effective December 13, 2006. Regulation 1699 now requires a permit for a location  
11            maintaining a stock of goods (even if not the retailer’s only location in California) which delivers  
12            goods pursuant to sales negotiated outside California. (Cal. Code Regs., tit. 18, § 1699, subd. (a).)  
13            Regulation 1802 now provides for allocation of the local sales tax to the location maintaining a stock  
14            of goods that makes the delivery if the sale was negotiated outside California and no other California  
15            location of the retailer participated in the sale. (Cal. Code Regs., tit. 18, § 1802, subd. (c)(2).)  
16            However, when more than one California location participates in the sale, the provisions of subdivision  
17            (c) of Regulation 1802 do not apply, and we must look to the general rules of Regulation 1802, as  
18            explained above.

19            For the sales where the goods were shipped to Union City from either the Cypress or La Mirada  
20            warehouse, the place of sale was either the warehouse location or the Union City location, depending  
21            on which location is regarded as having the greater participation in the sale, as explained above. (Cal.  
22            Code Regs., tit. 18, § 1802, subd. (a)(2)(B).) We find that the combined activities performed by a  
23            California warehouse, which include receiving instructions from headquarters regarding the orders  
24            negotiated out of state, removing the goods from inventory to fulfill those orders, packing those goods  
25            for shipment in containers labeled for shipment to specific customers, and delivering them to Union  
26            City, are more significant than the activities performed by the Union City location which, upon receipt  
27            of these goods from the California warehouse, merely sorts and transfers the goods to another vehicle  
28            for final delivery to the customers. Thus, for sales where the Union City location delivered goods

1 shipped to it from one of the two California warehouses, the place of sale was the location of the  
2 California warehouse who shipped the goods to the Union City location, and the local sales tax cannot  
3 be reallocated to petitioner. Accordingly, we recommend that the petition be denied as to this portion  
4 of the disputed local sales tax.

5 For the sales where all the goods were shipped to Union City from the out of-state  
6 warehouse of the retailer, since the Union City location was the only California location of the retailer  
7 who participated in the sale, the place of sale was Union City. (Cal. Code Regs., tit. 18, § 1802, subd.  
8 (a)(2)(A).) The retailer estimates that 10 percent of the deliveries made from the Union City location  
9 are for goods received from the out-of-state warehouse. That is, of the \$1,628,325 in local tax reported  
10 to countywide pools for deliveries from the Union City location, about \$162,833 were for sales where  
11 Union City delivered property and was the only California location participating in the sale.  
12 Accordingly, for these sales, if petitioner were to prevail, this is the maximum amount actually eligible  
13 for reallocation. However, we conclude that this amount is not eligible for reallocation directly to  
14 petitioner.

15 When a location is not required to hold a seller's permit and is the only California location of  
16 the retailer that participates in the sale, the local sales tax applicable to that location must be allocated  
17 through the countywide pool.<sup>7</sup> Here, the evidence indicates that the Union City location neither  
18 negotiates sales nor maintains inventory for purposes of fulfilling orders negotiated out of state. This  
19 location merely receives shipments of goods from the retailer's warehouse located out of state for  
20 delivery to the retailer's customers. For these sales, the goods are withdrawn from inventory at the  
21 out-of-state warehouse and identified to the specific contracts of sale no later than when they are  
22 packaged for delivery to the customer, which we understand occurs at the out-of-state warehouse.  
23 Once identified to a contract of sale, we find that goods in route to a customer are no longer regarded

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25 <sup>7</sup> Article III, paragraph B, of the Agreement for Administration of Local Sales and Use Tax provides that when the "place  
26 of sale" or "place of use" cannot be identified with a permanent place of business in this State *as determined by the Board*,  
27 the local tax will be allocated in one of two ways. The Board may distribute such local tax to all conforming taxing  
28 jurisdictions in the county where the sale occurred using ratios reflected by the distribution of taxes collected from all other  
retailers in that county (countywide pool), or the Board may distribute such tax to all conforming tax jurisdictions of the  
State using the ratios reflected by the distribution of taxes collected from all other retailers in the State (statewide pool).  
This process not only reduces the Board's administrative burden of determining specific tax area codes for each incidence  
of tax, but it also eliminates similar responsibilities that would be placed on the retailer.

1 as a stock of goods. Thus, since the Union City location maintains no stock of goods from which  
2 deliveries are made as needed, but instead receives only transshipped goods for which the out-of-state  
3 warehouse already prepared the package for shipping (e.g., adding the mailing label), we find that the  
4 deliveries made by Union City are not deliveries made from a stock of goods at the Union City  
5 location.

6 Since the Union City location does not maintain a stock of goods from which deliveries are  
7 made, it is not required to hold a seller's permit. Thus, the local sales tax where the Union City  
8 location was the place of sale is properly allocable through the Alameda countywide pool rather than  
9 directly to petitioner. However, the retailer did not allocate such tax using either of these methods, and  
10 instead allocated the tax as use tax to the respective countywide pools of the place of use (destination).  
11 Since petitioner is the only jurisdiction that has filed a petition for reallocation, any reallocation of the  
12 mis-allocated local tax (up to period for which the Department can reallocate the tax based on its  
13 operationally documented date of knowledge) can be made only for the benefit of petitioner.

14 We conclude that the \$162,833 in local tax that was allocated as local use tax through the  
15 various applicable countywide pools for sales where the Union City location made deliveries of goods  
16 shipped to it solely by the out-of-state location should have all been allocated as local sales tax to the  
17 Alameda countywide pool. Had this tax been allocated properly, the Department estimates that  
18 petitioner's share of the Alameda countywide pool would have been about \$6,200 more than it  
19 received. We therefore recommend that the petition be granted in part and that about \$6,200 (the  
20 specific amount to be calculated by the Department) be reallocated from the other northern California  
21 pools to petitioner. We recommend that the remainder of the petition be denied.

22 **OTHER DEVELOPMENTS**

23 None.

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