

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

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3 In the Matter of the Petition for Reallocation)
4 of Local Tax Under the Uniform Local Sales)
5 and Use Tax Law of:)
6 CITY OF POMONA & TOWN OF LOS GATOS) Case ID 469261
7 Petitioner)

8 Retailer: Seller of data communication products
9 Date of knowledge: June 17, 1994 (Pomona)
September 28, 1994 (Los Gatos)
10 Allocation period:¹ July 1, 1993 – December 31, 2007 (Pomona)
October 1, 1993 – December 31, 2007 (Los Gatos)
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12 Estimated amount in dispute: \$9,531,496² (Pomona)
13 Amount proposed to be reallocated: \$146,630³ (Los Gatos)
14 Notifications required: 42 jurisdictions⁴
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16 The Board heard this matter on August 31, 2009, after which the Board deferred its decision to
17 give the parties the opportunity to reach an agreed result in this appeal.
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19 ¹ The allocation period ends on December 31, 2007, based on the date the Department operationally documented that the
20 taxpayer was misallocating the local tax. For the local tax incurred for periods on and after January 1, 2008, the
21 Department will be reallocating the local sales tax mis-allocated to the countywide pool without regard to the present
22 appeal, and will instruct the taxpayer accordingly.

23 ² The Department calculates that the local tax distributed through the Los Angeles countywide pool during the reallocation
24 period for sales by the taxpayer delivered to California consumers from the Pomona location totals \$9,649,496. The
25 Department estimates that petitioner already received about \$118,000 as its share of that distribution (the actual
26 redistribution, if any, will be calculated based on the relative ratios distributed from the county wide pool to the
27 participating jurisdictions for the quarter prior to the quarter the redistribution is effected). Thus, if the petitioner were to
28 prevail on all issues, the Department estimates the net redistribution to petitioner would be \$9,531,496.

³ The Department calculates that the local tax distributed through the Santa Clara countywide pool during the reallocation
period for sales delivered to California consumers from the Los Gatos location totals \$150,784. The Department estimates
that petitioner already received about \$4,154 as its share of that distribution. Thus, if our recommendation to grant the
petition were upheld, the Department estimates the net redistribution to petitioner would be \$146,630.

⁴ From the Los Angeles countywide pool, the Cities of Alhambra, Arcadia, Beverly Hills, Burbank, Carson, Cerritos,
Commerce, Covina, Culver City, Downey, El Monte, El Segundo, Gardena, Glendale, Glendora, Hawthorne, Industry,
Inglewood, Lakewood, La Mirada, Lancaster, Long Beach, Los Angeles, Manhattan Beach, Monrovia, Montebello,
Norwalk, Paramount, Pasadena, Redondo Beach, Santa Clarita, Santa Fe Springs, Santa Monica, Signal Hill, South Gate,
Torrance, West Covina, West Hollywood, and Whittier, the Palmdale Redevelopment Agency, and the County of Los
Angeles; and, from the Santa Clara countywide pool, the City of San Jose.

1 This matter comes to the Board under the guidelines in effect prior to the initial adoption of
2 California Code of Regulations, title 18, section (Regulation) 1807 in 2002. A petitioning jurisdiction
3 did not obtain a Board hearing as a matter of right under those prior guidelines. Rather, if an appeal
4 were denied by Board Management, the petitioning jurisdiction could ask a Board Member to request
5 the full Board to grant a hearing. Here, petitioners' appeal was denied by Board Management on July
6 24, 2000, and petitioners did not take any action to request a Board hearing until doing so by letter
7 dated September 9, 2008. On December 17, 2008, the Board granted petitioners' request for hearing
8 despite our recommendation that the request be denied as untimely. We understand the Board's action
9 to be based on the finding that the appeal remains open. As such, we recommended in our summary
10 for the oral hearing that the petitions be granted for periods beginning October 1, 1993, and the local
11 sales tax be reallocated directly to petitioners based on the warehouse making the delivery. Our
12 recommendation as to Los Gatos was not disputed, and our recommendation on that appeal remains
13 that it should be granted. For the appeal by Pomona, however, a number of substantially affected
14 jurisdictions participated in the hearing to dispute our recommendation, and it is the appeal of Pomona
15 for which the Board deferred its decision.

16 After the hearing, Pomona put its offer in writing to all substantially affected jurisdictions to
17 accept a 20 percent reduction in the amount in dispute and to spread the amounts it would receive over
18 eight quarters in mitigation. The only acceptance Pomona received to its offer was by Long Beach.
19 Pomona thereafter suggested to the substantially affected jurisdictions a one-day mediation to facilitate
20 further discussion, which as far as we know, was also not accepted. In response to Pomona's offer, the
21 HdL Companies (HdL), representing 23 substantially affected jurisdictions, the law firm of Richards,
22 Watson & Gershon (RWG), representing ten jurisdictions, and the City of Los Angeles all rejected
23 Pomona's offer and proposed a resolution that the redistribution to Pomona under its petition be
24 limited to local tax incurred beginning in the first quarter of 2007 based on the December 13, 2006
25 effective date of the amendments to Regulations 1699 and 1802 (2006 amendments). As a final
26 attempt at resolution, Pomona is now willing to take a 25 percent reduction, but without mitigation.

1 We reject the proposal by HdL, RWG, and the City of Los Angeles to redistribute using the
2 effective date of the 2006 amendments since, by ignoring the retroactivity of the regulatory
3 amendments, the proposal fails to recognize the substantive validity of the petition for redistribution
4 for periods beginning October 1, 1993. Further, we note that this proposal is wholly unreasonable
5 since it proposes a redistribution to Pomona of only about one percent of the disputed tax.

6 However, Pomona's proposal does not sufficiently address the eight-year delay that it took to
7 request a Board hearing. Pomona could have, and we believe should have, made its request for Board
8 hearing shortly after Board Management's denial in 2000. Certainly the time was ripe for requesting a
9 Board hearing in 2006, after the effective date of the regulatory amendments that actually support
10 Pomona's requested redistribution. However, even after those amendments, petitioner still did not
11 request a hearing until September 9, 2008. While its request for hearing was timely under the
12 transition rule set forth in Regulation 1807, that is a separate issue from whether the appeal was open
13 or close, and certainly does not mean the Board should ignore what appears to be needless months of
14 delay, for which the affected jurisdictions had essentially no part in, in deciding whether to exercise its
15 discretion under Revenue and Taxation Code section 7209.

16 While all parties have suffered from the long time it has taken to resolve this appeal, that the
17 degree of hardship is not easy to quantify or compare. Given the Board's discretion under Revenue
18 and Taxation Code section 7209 to redistribute a lesser amount than the total amount eligible for
19 redistribution, and in view of the circumstances described above, we think that the Board should
20 redistribute some, but not all, of the disputed tax. We find that it reasonable and fair to redistribute 50
21 percent of the local tax incurred for periods October 1, 1993, through December 31, 2007, from the
22 Los Angeles countywide pool directly to Pomona, less the amount Pomona already received as its
23 share of the original distributions. Further, in the interest of reaching a global resolution, we think that
24 Long Beach should be included in our recommendation and that the affected jurisdictions should be
25 offered eight quarters of mitigation.

26 Accordingly, we recommend that the same proration apply to all affected jurisdictions, and that
27 the Board order local tax of \$4,759,398 be redistributed from the Los Angeles countywide pool for the
28 period October 1, 1993, through December 31, 2007, directly to Pomona after deducting Pomona's

1 share of the original distributions to the pool for that period. We recommend that Pomona’s petition as
2 to local tax incurred prior to October 1, 1993, be denied. We also recommend that eight quarters of
3 mitigation be offered to all affected jurisdictions.

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