

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petitions for Reallocation of Local Tax
Under the Uniform Local Sales and Use Tax Law of
Cities of Agoura Hills, et al.
Case ID 469672

Appearances:

Petitioner Fillmore:	Joseph A. Vinatieri, Attorney
Petitioner Moreno Valley:	Robin Sturdivant, Representative
All other Petitioners:	Eric Myers, Attorney
Sales and Use Tax Department:	Cary C. Huxsoll, Tax Counsel
Appeals Division:	Trecia M. Nienow, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers when a seller's permit must be issued to a "buying company" as that term is defined by California Code of Regulations, title 18, section (Regulation) 1699, subdivision (h). We conclude that the requirements for issuing a seller's permit to a buying company are identical to those for issuing a seller's permit to any other type of entity.

The retailer in this appeal (Retailer) qualifies as a buying company under Regulation 1699, subdivision (h). It sells equipment, fixtures, and supplies for consumption nationwide to its parent and sole customer pursuant to a Master Sale Agreement (MSA) negotiated outside this state and entered into on May 1, 2006. Retailer maintains two warehouses in California, and has other facilities located outside California, including its corporate headquarters. On the same day it entered into the MSA, Retailer also entered into an Agency Agreement with an unrelated third party (UTP) in connection with an Economic Development Agreement that UTP had previously entered into with Fillmore in June 2003. Under these agreements, Fillmore pays UTP 85 percent of the local sales tax it receives from Retailer and retains only 15 percent. From its 85 percent share, UTP pays Retailer between 50 and 80 percent of the local sales tax Retailer reports to Fillmore, and UTP retains the remainder (i.e., 5 to 35 percent). As required by the Agency Agreement, UTP opened an office in Fillmore on June 1, 2006, and applied for and received a seller's permit for that office. For sales delivered to its parent in California on and after June 1, 2006, Retailer has reported its local tax as sales tax to the office of UTP in Fillmore.

The Sales and Use Tax Department concluded that a seller's permit should not have been issued to the Fillmore location. Thus, it determined that for sales delivered from inventories of Retailer's California warehouses, the local tax is allocable as sales tax to the location of the warehouse making the delivery and that for sales delivered from inventories of Retailer's out-of-state facilities or its vendors, the local tax is allocable as use tax through the countywide pools of

the places of use. The Appeals Division agreed, and recommended that the Fillmore petition be denied and all other petitions be granted.

Fillmore appealed to us, contending that, because Retailer is a buying company under Regulation 1699, subdivision (h), issuance of a seller's permit to Retailer for the Fillmore location is mandatory, relying on the final sentence of that provision: "Such a buying company shall be issued a seller's permit and shall be regarded as the seller of tangible personal property it sells or leases." That is, Fillmore essentially contends that this provision mandates the Board issue a seller's permit to whatever location the buying company desires to hold a seller's permit, without regard to the otherwise applicable rules for issuing seller's permits. Fillmore thus contends that the local tax was properly allocated directly to it.

Revenue and Taxation Code section 6066 requires persons desiring to engage in business as a seller of tangible personal property to apply for a seller's permit for each such place of business, and Revenue and Taxation Code section 6067 requires the Board to issue a seller's permit to that seller once all conditions are satisfied. These provisions are implemented by subdivision (a) of Regulation 1699, which requires a seller to hold a permit for each place of business in this state at which orders for sales are customarily taken or contracts for sales customarily negotiated. A seller's permit is not issued to a seller's business location that does not customarily negotiate sales or take orders for sales, except in the case of warehouses under certain specific circumstances. Generally, seller's permits are not issued to a warehouse that does not negotiate sales or take orders. However, a person maintaining a stock of goods in this state for sale must hold at least one seller's permit, so if that person has no California location other than the stock of goods or had another California location but that location does not customarily negotiate or take orders for sales, a seller's permit would be issued to the warehouse location. Additionally, a seller's permit will be issued to a seller's warehouse location from which it makes deliveries from the stock of goods pursuant to retail sales negotiated outside California. (*Ibid.*)

We reject Fillmore's reading of subdivision (h) of Regulation 1699 to mandate the issuance of a seller's permit to the location of a buying company's choice without regard to any other factor, and in violation of subdivision (a) of Regulation 1699. While, perhaps, our wording of subdivision (h) could have been more clear, that does not mean that provision can be read without any connection to reality. Fillmore's view appears to be that, not only must a seller's permit *always* be issued to an entity that qualifies as a buying company, but that such a permit must also be issued to the location chosen by that buying company, even if the location is not otherwise authorized to hold a seller's permit under the Board's regulations. Under this logic, a California seller's permit would have to be issued to *every* entity that qualifies as a buying company under subdivision (h), even in the absence of any in-state place of business, sales activity, or stock of goods. After all, following Fillmore's logic, that is what it says. There is simply no basis for Fillmore's view since subdivision (h) of Regulation 1699 is not an exception to the general rule provided by section 6066, interpreted by subdivision (a) of Regulation 1699.¹ Furthermore, the present situation is not one where the subject entity does not have locations that

¹ Section 6072, interpreted by subdivision (f) of Regulation 1699, specifically indicates that a permit shall be held only by persons actively engaging in or conducting a business (in this state) as a seller of tangible personal property. There can be no lower standard applied to buying companies.

clearly qualify for permits. As discussed below, both warehouse locations are required to hold seller's permits. This unequivocally satisfies even Fillmore's literal reading of the regulation, and eliminates any basis for Fillmore's contention that the wording of subdivision (h) requires the issuance of a seller's permit to a location which may not hold a seller's permit under provisions of subdivision (a).

Here, Retailer qualifies as a buying company that we recognize as a separate legal entity, one which is entitled to hold, and indeed must hold, a seller's permit for any applicable location in accordance with subdivision (a) of Regulation 1699. The MSA pursuant to which all the sales at issue here were made was entered into outside California. Those sales included deliveries to other California locations from both of Retailer's California warehouses. Accordingly, under subdivision (a) of Regulation 1699, both of those warehouses were required to hold seller's permits. Thus, even if Fillmore were correct that subdivision (h) of Regulation 1699 *mandates* issuance of a seller's permit to a qualifying buying company, that mandate would be clearly satisfied by the requirement that each California warehouse location of Retailer hold a seller's permit. Nevertheless, subdivision (h) does not entitle a buying company to a seller's permit for the location of its choice rather than (or in addition to) the location(s) for which the law and regulations require the issuance of the permit. Instead, that location must be a place where orders are taken, where contracts are customarily negotiated, or where merchandise is stored under specified conditions. (Cal. Code Regs., tit. 18, § 1699, subd. (a).)

For the reasons explained above, we find that Retailer must hold a seller's permit for each of its California warehouse locations, but that a permit is not properly held by Retailer (or by UTP) in connection with the Fillmore location since that location was not used to take orders for sales or for negotiating contracts for sales, nor is a stock of goods for sale maintained at that location. Even more fundamentally, however, is that the Fillmore location is UTP's location, not Retailer's. UTP operated the Fillmore location itself, from its own resources. Even if UTP actually performed all activities which have been purported to have been performed at the Fillmore office, which has not been established, and it were doing so on Retailer's behalf, UTP is *not* Retailer. When an agent or representative performs duties at its own business location on behalf of its principal or other client, that does not transmute the agent or representative's office into the office of the principal or other client. Rather, the office remains that of the agent or representative. Here, the only evidence indicating that the Fillmore office was a business location of Retailer is that Retailer's name is listed on the building's directory. However, no evidence has been submitted to show that Retailer even knew its name was listed on the directory or that Retailer directed or authorized the landlord to put its name on that directory. Nor was there any evidence, or even claim, that any of Retailer's employees worked in, at, or out of the Fillmore office or that Retailer ever held that office out to its parent as its own place of business. Thus, we find that the Fillmore office is UTP's own location and not that of Retailer, which means that we could not issue a seller's permit to Retailer for the Fillmore location, without regard to any other consideration.

We conclude that Retailer is required to hold a seller's permit for each of its two California warehouse locations, and that the seller's permit issued to Retailer for the subject Fillmore location was incorrectly issued. We thus conclude that the subject local sales tax

should be reallocated to the jurisdiction of the California warehouse making the delivery, and the subject local use tax should be reallocated through the countywide pools of the places of use.

Adopted at Sacramento, California on August 21, 2012.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member*

*For John Chiang, pursuant to Government Code section 7.9.

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