

## CALIFORNIA STATE BOARD OF EQUALIZATION

## APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petitions for Reallocation )  
of Local Tax Under the Uniform Local Sales ) Case IDs 490742, 490743, 491071, 491114,  
and Use Tax Law of: ) 491141, 491144, 491148, 491157, 491828, 491833,  
) 491849, 491853, 491859, 491861, 491868, 491869,  
CITIES OF ANAHEIM, BERKELEY, ) 491880, 491881, 491954, 491956, 491957, 491958,  
BREA, CAMPBELL, CARLSBAD, ) 492028, 492060, 492061, 492898, 493237, 493282,  
CONCORD, CUPERTINO, CYPRESS, EL ) 493587, 493753, 493881, 493882, 493907, 493916,  
SEGUNDO, EMERYVILLE, ESCONDIDO, ) 493917, 494289, 494361, 494363, 494369, 494372,  
FOSTER CITY, FRESNO, FULLERTON, ) 494380, 494392, 494396, 494402, 494415, 494416,  
GILROY, IRVINE, LONG BEACH, LOS ) 494419, 494423, 494434, 494437, 494439, 494451,  
ANGELES, MENLO PARK, MILPITAS, ) 494473, 494477, 494489, 494624, 495109, 495115,  
MONTEREY, NEWPORT BEACH, ) 495130, 495132, 495138, 495150, 495151, 495152,  
NOVATO, ONTARIO, PETALUMA, ) 495275, 495315, 495317, 495384, 495420, 495743,  
REDWOOD CITY, RIVERSIDE, SOUTH ) 495746, 495749, 495786, 495794, 495795, 496960,  
SAN FRANCISCO, SACRAMENTO, SAN ) 496983, 496997, 497000, 497005, 497347, 497353,  
BRUNO, SAN CLEMENTE, SAN DIEGO, ) 497357, 497410, 497413, 497414, 497445, 497450,  
SAN JOSE, SAN LEANDRO, SAN ) 497451, 497454, 497456, 497458, 497459, 497462,  
MATEO, SAN RAMON, SANTA ANA, ) 497463, 497520, 497543, 497546, 497551, 497552,  
SANTA CLARA, SANTA FE SPRINGS, ) 497588, 497592, 497595, 497604, 497605, 497611,  
TORRANCE, TUSTIN, UNION CITY, ) 505268, 505270, 505405, 505409, 505413, 505514,  
WALNUT CREEK, COUNTY OF ) 505521, 505527, 505585, 506380, 506451, 506453,  
SACRAMENTO ) 506473, 506666, 509585, 509586, 509874, 510076,  
) 510077, 510085, 510737, 511108

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Petitioners

Dates of knowledge: Summary exhibit A

Allocation periods: Various<sup>1</sup>

Amounts in dispute: Not calculated<sup>2</sup>


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<sup>1</sup> Reallocations may be made back to the distributions made during the two quarters prior to the quarter of the date of knowledge. (Rev. & Tax. Code, § 7209; Cal. Code Regs., tit. 18 § 1807, subd. (e) (note that distributions are made *after* the quarter for which they are paid, so this rule generally translates into three quarters if, as is usually the case, the reference is based on the quarter for which the returns were filed).) The allocation period ends when the taxpayer ceases the activities at the subject location covered by the petition or, if still engaging in those activities at that location, the end of the quarter during which the appeal is presented to the Board for decision. The allocation periods here begin as early as October 1, 1985, and some extend through June 30, 2010. For the same reasons discussed in the next footnote, we have not asked the Department to determine the specific end dates for each petition.

<sup>2</sup> We have not asked the Department to expend the considerable resources that would be required to calculate the amounts in dispute, which is usually done for purposes of notification of jurisdictions who would be substantially affected by a Board decision to grant the petitions. (Cal. Code Regs., tit. 18, § 1807, subds. (a)(6) & (d)(2).) The calculation here would require a detailed review of the taxes paid by the 109 taxpayers involved (63 of which have closed, exacerbating the problem) for periods extending back 20 years or more. That review would include a determination of the actual allocation period for each of the 150 petitions, whether the taxpayers even reported and paid local tax on the subject transactions, and if so, how much related to the disputed transactions. We have concluded that, in this particular matter, such an expenditure

1 Notifications: All jurisdictions

2 **BACKGROUND**

3 The 150 petitions involve 109 taxpayers and were filed on the dates listed in summary exhibit  
4 A (i.e., the earliest on September 30, 1986 and the latest on December 21, 1995) and are part of a large  
5 group of petitions filed by petitioners' representative, MuniServices, LLC, which are commonly called  
6 the "Mass Appeals."<sup>3</sup> The allegations of the petitions are that the sales were subject to sales tax, and  
7 that sales tax should have been directly allocated to petitioners. An appeals conference for these  
8 petitions, and others, was held by the Local Tax Appeals Auditor within the Sales and Use Tax  
9 Department (Department),<sup>4</sup> and he issued a Decision and Recommendation on April 19, 2001 (D&R).  
10 The D&R recommends that the subject petitions be denied because the sales occurred outside  
11 California and the applicable tax was use tax. Petitioners timely appealed that decision to Board  
12 Management on June 18, 2001. Board Management's decision was held in abeyance pending  
13 development of a better process for reviewing these petitions, with definite time schedules and  
14 procedures. Part of this process was the initial adoption of California Code of Regulations, title 18,  
15 section (Regulation) 1807 in 2002, effective in 2003, which superseded, subject to a transition rule  
16 applicable to the subject petitions, the "Process for Reviewing Local Tax Allocations" that was  
17 adopted in June 1996, and amended in October 1998. Petitioners' appeal was thereafter denied by  
18 Board Management on January 14, 2004. On April 12, 2004, in accordance with the transition rule,  
19 petitioners submitted their election to proceed under the provisions of Regulation 1807, and timely  
20 perfected their right to a Board hearing.

21  
22 of resources is not necessary for purposes of notification since there are so many petitions in connection with so many  
23 taxpayers, that it is reasonable to notify every jurisdiction for whom we administer their local sales and use tax as  
24 having the potential of being substantially affected by a Board decision to grant the petitions. Thus, the expenditure of  
25 Department resources for this calculation will be necessary only if the Board overturns our recommendation.

26 <sup>3</sup> Of the 153 petitions originally noticed for the Board's decision in this proceeding, three petitions, each of which was filed  
27 on November 21, 1995, were withdrawn (Case IDs 494396 and 495778 filed by the City of San Rafael and Case ID 506455  
28 filed by the City of South Gate) and thus have been closed. Of the 150 petitions remaining for Board decision, 41 are  
included in one of two lawsuits that were filed on February 20, 2009, in the Superior Court of San Francisco: *City of South  
San Francisco v. State Board of Equalization*, San Francisco Superior Court No. CPF-09-509231 and *Cities of Alameda,  
Irvine, Newport Beach, Roseville, San Ramon and Santa Fe Springs v. State Board of Equalization*, San Francisco Superior  
Court No. CPF-09-509234.

<sup>4</sup> The duties of the Local Tax Appeals Auditor were transferred to the Appeals Division in 2005, and the responsibilities of  
the Appeals Division in resolving local tax reallocation appeals were formalized in 2008 by amendment to California Code  
of Regulations, title 18, section 1807.



1 responsibilities outside California with respect to physical delivery of the goods. We thus conclude  
2 that there is no basis for reallocation of the local tax.

3 We note, to start, that petitioners have established no facts whatsoever. Thus, even if  
4 petitioners' contentions about how the law applies were valid, we would have no basis for  
5 recommending reallocation of the tax. Petitioners contend that a California place of business of each  
6 taxpayer participated in all of the subject transactions and that this participation is sufficient for sales  
7 tax to apply, even though petitioners have not disputed that, for all of the subject transactions, the  
8 goods were shipped from outside California to the customers in this state. Petitioners further assert  
9 that since the tax was sales tax based on the participation of a location of the taxpayer within each  
10 petitioner's jurisdiction, that sales tax should be reallocated directly to the jurisdiction of each  
11 respective taxpayer location that participated in the transactions. The Department contends that the  
12 transactions occurred outside California, meaning that the applicable tax was use tax because title  
13 passed outside California at the time of shipment.

14 In order for a sale to be subject to sales tax, the sale must have occurred in California and there  
15 must be some local participation in the transaction by a California office of the retailer. (Cal. Code  
16 Regs., tit. 18, §§ 1620, subd. (a)(1).) Otherwise, the use tax applies. That is, when title passes and the  
17 sale occurs outside California, the state sales tax does not apply, without regard to any participation in  
18 the transaction by the retailer within California. (Rev. & Tax. Code, §§ 6010.5, 6051 (sales tax  
19 applicable only to retail sales "in this state"); Cal. Code Regs., tit. 18, § 1620, subd. (a)(2)(A).) The  
20 same rules are applicable to determine whether the local tax is sales tax or use tax. (Rev. & Tax. Code,  
21 §§ 7202, 7303; Cal. Code Regs., tit. 18, § 1803, subd. (a)(1).) Furthermore, contrary to petitioners'  
22 belief, Revenue and Taxation Code section 7205 is not determinative of whether local sales tax  
23 applies, but rather to where the local sales tax is allocated *if* the local tax is sales tax. That is, section  
24 7205 is wholly irrelevant to circumstances where the local tax is use tax: the provisions of section 7205  
25 do not transmute a local use tax into a local sales tax.

26 Since the Board did not amend the regulations on which the D&R relied, the only basis for  
27 overturning the D&R would be to establish that the sales actually occurred in California (i.e., title  
28 passed inside this state). Regulation 1628, subdivision (b)(3)(D), explains that title passes and the sale

1 occurs when and where the retailer completes its performance with reference to the physical delivery  
2 of the goods, unless the contract provides for earlier passage of title. If the retailer is required to send  
3 the goods to the customer but is not required to deliver them at destination, the retailer completes its  
4 performance with respect to physical delivery at the time and place of shipment. (Cal. Code Regs., tit.  
5 18, § 1628, subd. (b)(3)(D).) For example, where shipment is by common carrier, the retailer generally  
6 completes its performance with respect to physical delivery of the property at the time the retailer  
7 tenders the goods to the carrier for shipment. Thus, where the retailer tenders the goods to a common  
8 carrier at a point outside California, title generally passes and the sale occurs at that time. This is  
9 entirely consistent with, and required by, the provisions of the Uniform Commercial Code, and has  
10 been applied for many years to all transactions subject to the Sales and Use Tax Law, not just to issues  
11 related to allocation of local tax. Furthermore, a petition for reallocation of local tax may be granted  
12 only if there is a finding of misallocation supported by a preponderance of the evidence, and if the  
13 preponderance of evidence does not show that a misallocation occurred, the petition must be denied.  
14 (Cal. Code Regs., tit. 18, § 1807, subds. (b)(2), (d)(5).)

15 Here, not only has there been no evidence to establish that the sales occurred in California (i.e.,  
16 title passed inside this state) submitted in connection with these petitions, but most of the petitions do  
17 not even assert such facts (i.e., most petitions only assert local participation occurs inside this state).  
18 The petitioners have provided no documents in support of their position and the petitions are supported  
19 only by ambiguous and unsupported assertions. An example of the type of “information” included in  
20 the subject petitions is an allegation without any support that, “Salespeople officing at this location sell  
21 tangible personal property . . . which is delivered to end users in California in transactions that are  
22 subject to local sales and use tax” and a cite to the provisions of Regulation 1802, subdivisions (a)(1)  
23 or (2).<sup>6</sup> While the D&R indicates that the Department and petitioners, in general, agree that there was  
24 local participation, there was no documentation provided by petitioners to support such fact.

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26  
27 <sup>6</sup> We note that a petition filed in this manner today would be rejected for lack of sufficient factual data to support the  
28 probability that a local tax has been misallocated. (Cal Code Regs., tit. 18, § 1807, subd. (a)(3).) We also note that the  
subject petitions, among others, were classified by petitioners’ representative into a category (2B) that was identified on  
Exhibit 3 to the D&R to include: “No Contract Available. . . . No response to questionnaire and no other information  
regarding passage of title.”

1 Nevertheless, even if we were to accept petitioners' contention that there was local participation with  
2 respect to every transaction at issue, petitioners would have still failed to establish that sales tax was  
3 applicable to the subject transactions because they have not provided any evidence to show that any of  
4 the sales occurred in California. Thus, we find that petitioners have not shown that there was any  
5 misallocation, and conclude that there is no basis for any reallocation. Accordingly, we recommend  
6 that all of these petitions be denied.

7 **OTHER DEVELOPMENTS**

8 None.

9  
10 Attachment: Summary exhibit A

11  
12 Summary prepared by Trecia M. Nienow, Tax Counsel III (Specialist)

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# OF PETITIONS	CASES ID	PETITIONER	DOK	MUNISERVICES #
1	491868	Irvine	9/30/1986	11150
2	497357	Santa Ana	12/1/1986	11715
3	505268	Menlo Park	6/29/1987	11231
4	497546	Torrance	12/12/1988	12057
5	494363	Fullerton	6/30/1989	10983
6	493881	Santa Clara	9/30/1991	15582
7	510076	Irvine	11/20/1991	16228
8	495130	Anaheim	3/27/1992	17259
9	495794	Sacramento County	12/23/1992	19929
10	494416	Redwood City	9/27/1993	22858
11	494437	Torrance	12/23/1993	23778
12	495151	Irvine	3/29/1994	24311
13	495151	Sacramento	3/29/1994	24310
14	509585	Newport Beach	3/29/1994	24721
15	493916	San Mateo	6/17/1994	25226
16	497410	Emeryville	9/28/1994	26231
17	497604	Fresno	9/28/1994	26308
18	494477	Cypress	6/28/1995	28085
19	491144	Santa Fe Springs	6/28/1995	28181
20	491956	Irvine	6/28/1995	27834
21	496960	Tustin	11/21/1995	40269
22	495315	Los Angeles	11/21/1995	40682
23	495317	Milpitas	11/21/1995	40102
24	495275	San Jose	11/21/1995	40638
25	491859	San Ramon	11/21/1995	40684
26	495115	Petaluma	11/21/1995	40722
27	495152	Irvine	11/21/1995	40221
28	495152	Sacramento	11/21/1995	40218
29	493587	Irvine	11/21/1995	40147
30	495138	Ontario	11/21/1995	40122
31	495132	Anaheim	11/21/1995	40405
32	491853	San Ramon	11/21/1995	40256
33	494451	Ontario	11/21/1995	40685
34	491849	San Ramon	11/21/1995	40683
35	494624	Concord	11/21/1995	40688
36	494624	Irvine	11/21/1995	40670
37	492061	Irvine	11/21/1995	40712
38	496997	Santa Ana	11/21/1995	40173
39	494473	Cypress	11/21/1995	40397
40	494473	San Ramon	11/21/1995	28967
41	509874	El Segundo	11/21/1995	40714
42	509874	Ontario	11/21/1995	40718
43	495795	Sacramento County	11/21/1995	40577
44	495786	Torrance	11/21/1995	40569
45	495109	Santa Clara	11/21/1995	40612
46	495749	Santa Clara	11/21/1995	40093
47	492028	Irvine	11/21/1995	40327
48	495743	Tustin	11/21/1995	40605
49	491148	Santa Fe Springs	11/21/1995	40183
50	497445	San Bruno	11/21/1995	40637
51	506666	Anaheim	11/21/1995	40103
52	506666	Foster City	11/21/1995	40133
53	497450	Tustin	11/21/1995	40451

Summary Exhibit   A  

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# OF PETITIONS	CASES ID	PETITIONER	DOK	MUNISERVICES #
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54	497451	Brea	11/21/1995	40402
55	497451	Concord	11/21/1995	40401
56	497454	Berkeley	11/21/1995	40636
57	497458	Los Angeles	11/21/1995	40530
58	497414	Los Angeles	11/21/1995	40648
59	497462	Santa Clara	11/21/1995	40325
60	490743	Santa Fe Springs	11/21/1995	40444
61	497463	Torrance	11/21/1995	40454
62	497347	Santa Clara	11/21/1995	40606
63	497353	Milpitas	11/21/1995	40284
64	497353	Santa Ana	11/21/1995	40285
65	491957	Irvine	11/21/1995	40323
66	497413	Emeryville	11/21/1995	40050
67	491071	Santa Fe Springs	11/21/1995	40719
68	493917	San Mateo	11/21/1995	40235
69	491833	Irvine	11/21/1995	40445
70	493882	Santa Clara	11/21/1995	40409
71	495420	Campbell	11/21/1995	40049
72	493753	Riverside	11/21/1995	40129
73	494361	Fullerton	11/21/1995	40271
74	491828	Irvine	11/21/1995	40411
75	494372	Santa Clara	11/21/1995	40608
76	494289	Milpitas	11/21/1995	40368
77	494439	Novato	11/21/1995	40625
78	494439	San Clemente	11/21/1995	40624
79	494434	Torrance	11/21/1995	40446
80	494419	Los Angeles	11/21/1995	40668
81	494415	Redwood City	11/21/1995	40036
82	494402	Irvine	11/21/1995	40681
83	494402	San Jose	11/21/1995	40680
84	494402	San Ramon	11/21/1995	40679
85	494396	Irvine	11/21/1995	40258
86	494392	Anaheim	11/21/1995	40600
87	491869	Irvine	11/21/1995	40320
88	497592	San Jose	11/21/1995	40596
89	497588	San Jose	11/21/1995	40132
90	491880	Irvine	11/21/1995	40570
91	497605	Foster City	11/21/1995	40696
92	497605	Fresno	11/21/1995	40695
93	497605	San Diego	11/21/1995	40697
94	497605	Santa Fe Springs	11/21/1995	40698
95	505413	Carlsbad	11/21/1995	40280
96	505413	Long Beach	11/21/1995	40281
97	494369	Escondido	11/21/1995	40526
98	497595	San Ramon	11/21/1995	40601
99	497552	Los Angeles	11/21/1995	40633
100	511108	Cupertino	11/21/1995	40177
101	491114	San Ramon	11/21/1995	40703
102	494380	Los Angeles	11/21/1995	40447
103	493282	Tustin	11/21/1995	40514
104	505405	Union City	11/21/1995	40542
105	505585	Los Angeles	11/21/1995	40604
106	505585	Redwood City	11/21/1995	40603

Summary Exhibit   A  

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# OF PETITIONS	CASES ID	PETITIONER	DOK	MUNISERVICES #
107	509586	Foster City	11/21/1995	40449
108	509586	Newport Beach	11/21/1995	40448
109	505514	San Diego	11/21/1995	40316
110	510085	Anaheim	11/21/1995	40677
111	505270	Menlo Park	11/21/1995	40131
112	497543	Torrance	11/21/1995	40270
113	510077	Irvine	11/21/1995	40568
114	510077	San Jose	11/21/1995	40567
115	497551	Ontario	11/21/1995	40666
116	506453	Long Beach	11/21/1995	40393
117	497611	Los Angeles	12/21/1995	29293
118	497611	Santa Ana	12/21/1995	29292
119	491954	Irvine	12/21/1995	29317
120	497000	Tustin	12/21/1995	29332
121	495150	Los Angeles	12/21/1995	29327
122	494423	San Leandro	12/21/1995	29133
123	491157	Santa Fe Springs	12/21/1995	29174
124	492060	Irvine	12/21/1995	29098
125	496983	Los Angeles	12/21/1995	29329
126	497005	Gilroy	12/21/1995	29337
127	497005	Santa Ana	12/21/1995	29338
128	494489	Anaheim	12/21/1995	29178
129	495384	Los Angeles	12/21/1995	29148
130	495384	San Ramon	12/21/1995	29147
131	495746	San Diego	12/21/1995	29149
132	491141	Santa Fe Springs	12/21/1995	29262
133	497456	Los Angeles	12/21/1995	29319
134	497459	Los Angeles	12/21/1995	29151
135	491958	Irvine	12/21/1995	29367
136	493907	Los Angeles	12/21/1995	29279
137	492898	San Diego	12/21/1995	29119
138	492898	S. San Francisco	12/21/1995	29118
139	497520	Los Angeles	12/21/1995	29318
140	491881	Irvine	12/21/1995	29146
141	505409	Foster City	12/21/1995	29347
142	493237	Santa Ana	12/21/1995	29311
143	505527	Anaheim	12/21/1995	29286
144	505521	Los Angeles	12/21/1995	29313
145	510737	Monterey	12/21/1995	29314
146	506380	Walnut Creek	12/21/1995	29217
147	506451	Sacramento County	12/21/1995	29216
148	490742	Santa Fe Springs	12/21/1995	29094
149	491861	Newport Beach	12/21/1995	29290
150	506473	Milpitas	12/21/1995	29154