

1 **ALTERNATE A - STAFF'S VERSION**2 **CALIFORNIA STATE BOARD OF EQUALIZATION**3 **SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40**4
5 In the Matter of the Petitions for Reallocation of)
Local Tax Under the Uniform Local Sales and)
6 Use Tax Law of:)

Case IDs 525325, 525326

7 CITIES OF ONTARIO, PALM SPRINGS,)
SAN DIEGO, SANTA BARBARA, and)
8 COUNTIES OF SACRAMENTO, SAN MATEO)

Oral hearing date: March 29, 2016

Decision rendered (finality date): May 16, 2016

Publication due by: September 13, 2016

9 Petitioners)
10 _____)11 **Representing the Parties:**12 For Petitioners Cities of Ontario,
13 Palm Springs, San Diego, Santa Barbara
and County of Sacramento

Eric Myers, Attorney

14 For Petitioner San Diego

Matt Vespi, Representative
Paul Prather, Attorney

16 For Petitioner County of San Mateo

Brian J. Wong, Attorney

17 For Notified Jurisdiction City of Oakland

Christopher Kee, Attorney

18 For Business Tax and Fee Department:

Scott Claremon, Tax Counsel III (Specialist)

19 For Appeals Division:

Trecia M. Nienow, Tax Counsel IV

20 **BACKGROUND**21 The taxpayer was formed in 1983 for the purpose of buying and selling jet fuel. During the
22 period at issue here, taxpayer sold jet fuel primarily to its parent pursuant to master requirement
23 contracts.¹ The jet fuel was delivered to parent's aircraft at California airports from storage tanks
24 located within the same local taxing jurisdiction except that fuel delivered to aircraft at San Francisco
25 International Airport, which is located in the unincorporated area of San Mateo County, was delivered
26 _____27 ¹ Since the taxpayer is not a party to this appeal (Cal. Code Regs., tit. 18, § 1807, subd. (d)(3)), it is not identified in this
28 decision (see Rev. & Tax. Code, §7056).

1 from storage tanks located in South San Francisco. Thus, there is no dispute that title passed and the
2 sales occurred inside California. Nor is there any dispute that taxpayer had an office in Oakland.²
3 Taxpayer reported the tax on the disputed sales as sales tax and directly allocated the local tax to
4 Oakland based on the view that its Oakland office was the place of sale.

5 LEGAL ISSUE

6 Whether the local tax was correctly allocated as sales tax to Oakland.

7 FINDINGS OF FACT AND RELATED CONTENTIONS

8 The contracts of sale between parent and taxpayer required parent to submit monthly to
9 taxpayer's Oakland office a document, explicitly defined in the contracts as a purchase order but which
10 parent and taxpayer called a nomination, that provided parent's estimated needs at each location for the
11 next month. The contracts bound taxpayer "to perform under the Agreement only upon physical
12 receipt of a signed Purchase Order at the Oakland, CA location" and provided that such a purchase
13 order constituted parent's "unequivocal and unconditional offer to purchase" from taxpayer. The
14 evidence in this appeal established that parent did submit these purchase orders as required by the
15 contracts. Oakland asserts that the acceptance by taxpayer's Oakland office of the documents parent
16 and taxpayer called nominations constituted participation in the sales by that office.

17 Petitioners primarily contend that the documents parent and taxpayer called nominations were
18 not purchase orders but were instead estimates of what parent would order, and did not impose an
19 obligation on parent to purchase any particular quantity of fuel. While petitioners concede that the
20 nominations allowed the Oakland office to determine the fuel needed at each location in a given
21 month, petitioners assert that such activity had no meaningful effect on the sales transaction itself and
22 should not be regarded as part of the sales process. Thus, petitioners argue that the use tax applies
23 because taxpayer's Oakland office did not participate in the sales.

27 ² This office was opened after parent entered into a 10-year Economic Development Agreement with Oakland under which
28 parent received 65 percent of the local sales tax taxpayer reported to Oakland.

APPLICABLE LAW

A retail sale of tangible personal property for use in California is subject to sales or use tax depending on two factors: (1) whether title passes and the sale occurs in California; and (2) whether there is some participation in the sale by a California location of the retailer. (Rev. & Tax. Code, §§ 6051, 6201, 6401; Cal. Code Regs., tit. 18, § 1620, subds. (a)(1), (a)(2), (b)(1).) If the sale occurs in California *and* a California location of the retailer participates in the sale in any way, then sales tax applies. Otherwise, if the sale occurs outside California, or if there is no participation in the sale by a California location of the retailer, then use tax applies. The same rules are applicable to determine whether the local tax is sales tax or use tax. (Rev. & Tax. Code, §§ 7202, 7203; Cal. Code Regs., tit. 18, § 1803.)

Participation supporting imposition of sales tax on a particular sale must be tied to *that sale*. Under California Code of Regulations, title 18, section (Regulation) 1802, subdivision (a)(1), where the retailer has only one California place of business and that place of business participates in a sale subject to sales tax, that location is the place of sale. For purposes of Regulations 1620 and 1802, participation in the sale not only includes the taking of the order or the delivery of the purchased property from a place of business of the retailer but also includes activities occurring before delivery that are part of the sales process. To support the application of sales tax, that participation must have some meaningful effect on the sales process, that is, the participation must serve some real purpose in the actual sales process and involve some genuine physical interaction with the sale from that location, such as negotiating sales contracts with the customer, taking orders from the customer, approving credit, or delivering goods to the customer.³

Where the local tax is sales tax, that tax is allocated to the place of sale. (Rev. & Tax. Code, § 7205; Cal. Code Regs., tit. 18, § 1802, subd. (d).) Such place of sale generally receives a direct allocation if that location qualifies for issuance of a seller's permit under Regulation 1699 (i.e.,

³ Activities that *do not* constitute participation in the sale for purposes of Regulation 1620 include participation by a California business location of the retailer in that retailer's purchases of resale inventory; similarly, activities taking place after the sale has occurred, such as billing, do not constitute participation in the sale. However, billing before the sale has occurred would qualify as participation in the sale under that regulation.

1 negotiates sales, takes orders, or maintains a stock of goods under specified conditions), but otherwise,
2 the local sales tax is indirectly allocated to the place of sale through that location's countywide pool.
3 (Article III, paragraph B, of the Agreement for Administration of Local Sales and Use Tax.)

4 ANALYSIS & DISPOSITION

5 The master contracts required parent to submit a purchase order each month that reflected an
6 amount of fuel that was as close as parent could provide to the actual amount parent would require at
7 each applicable location during the following month, and parent was then required to purchase and
8 taxpayer was required to sell parent's actual requirements. That is, while the contracts do not
9 explicitly state that the required purchase orders would be estimates, they implicitly do so, and each
10 contract taken as a whole contemplates that those estimates would be binding purchase orders. Under
11 these circumstances, we find that the nominations constitute purchase orders for purposes of
12 Regulations 1620, subdivision (a)(2)(A) and 1802, subdivision (a)(1). Furthermore, even if the
13 nominations were not regarded as purchase orders for these purposes, we find that their receipt by
14 taxpayer's Oakland office nevertheless constituted participation in the sales by that office because the
15 nominations served a real purpose in the actual sales process. Accordingly, we conclude that the
16 disputed sales, which occurred in California with participation by the Oakland office, were subject to
17 state and local sales tax. We also find that taxpayer's Oakland office was its only business location in
18 California. Since that office received purchase orders, it was required to hold a seller's permit under
19 Regulation 1699. Thus, we conclude that the disputed local sales tax was correctly allocated to
20 Oakland.

ORDER

Pursuant to the analysis of the law and facts above, the Board ordered that the petitions be denied as to the disputed sales.

Adopted at Sacramento, California, on August __, 2016.

_____, Chairwoman

_____, Member

_____, Member

_____, Member

_____, Member*

*For Betty T. Yee, pursuant to Government Code section 7.9.

1 **ALTERNATE B – MEMBER RUNNER’S VERSION**2 **CALIFORNIA STATE BOARD OF EQUALIZATION**3 **SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40**4
5 In the Matter of the Petitions for Reallocation of)
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15 For Petitioner San Diego

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Paul Prather, Attorney

16 For Petitioner County of San Mateo

Brian J. Wong, Attorney

17 For Notified Jurisdiction City of Oakland

Christopher Kee, Attorney

18 For Business Tax and Fee Department:

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23 contracts.¹ The jet fuel was delivered to parent’s aircraft at California airports from storage tanks
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19 obligation on parent to purchase any particular quantity of fuel. While petitioners concede that the
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6 California *and* a California location of the retailer participates in the sale in any way, then sales tax
7 applies. Otherwise, if the sale occurs outside California, or if there is no participation in the sale by a
8 California location of the retailer, then use tax applies. The same rules are applicable to determine
9 whether the local tax is sales tax or use tax. (Rev. & Tax. Code, §§ 7202, 7203; Cal. Code Regs., tit.
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15 participation in the sale not only includes the taking of the order or the delivery of the purchased
16 property from a place of business of the retailer but also includes activities occurring before delivery
17 that are part of the sales process. To support the application of sales tax, that participation must have
18 some meaningful effect on the sales process, that is, the participation must serve some real purpose in
19 the actual sales process and involve some genuine physical interaction with the sale from that location,
20 such as negotiating sales contracts with the customer, taking orders from the customer, approving
21 credit, or delivering goods to the customer.

22 Where the local tax is sales tax, that tax is allocated to the place of sale. (Rev. & Tax. Code, §
23 7205; Cal. Code Regs., tit. 18, § 1802, subd. (d).) Such place of sale generally receives a direct
24 allocation if that location qualifies for issuance of a seller's permit under Regulation 1699 (i.e.,
25 negotiates sales, takes orders, or maintains a stock of goods under specified conditions), but otherwise,
26 the local sales tax is indirectly allocated to the place of sale through that location's countywide pool.
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28

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6 explicitly state that the required purchase orders would be estimates, they implicitly do so, and each
7 contract taken as a whole contemplates that those estimates would be binding purchase orders. Under
8 these circumstances, we find that the nominations constitute purchase orders for purposes of
9 Regulations 1620, subdivision (a)(2)(A) and 1802, subdivision (a)(1). Furthermore, even if the
10 nominations were not regarded as purchase orders for these purposes, we find that their receipt by
11 taxpayer's Oakland office nevertheless constituted participation in the sales by that office because the
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13 disputed sales, which occurred in California with participation by the Oakland office, were subject to
14 state and local sales tax. We also find that taxpayer's Oakland office was its only business location in
15 California. Since that office received purchase orders, it was required to hold a seller's permit under
16 Regulation 1699. Thus, we conclude that the disputed local sales tax was correctly allocated to
17 Oakland.

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28 ³ Board Member Runner concluded the nominations were purchase orders but reached no conclusion on the issue stated in this sentence.

ORDER

Pursuant to the analysis of the law and facts above, the Board ordered that the petitions be denied as to the disputed sales.

Adopted at Sacramento, California, on August __, 2016.

_____, Chairwoman

_____, Member

_____, Member

_____, Member

_____, Member*

*For Betty T. Yee, pursuant to Government Code section 7.9.