STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Reallocation of Local Tax Under the Uniform Local Sales and Use Tax Law of:	)	Case ID 433194
CITY OF TORRANCE	)	
Petitioner	)	

Retailer:	Seller of technology products
Date of Knowledge:	June 16, 2003
Allocation period:	July 1, 2002 – June 30, 2006
Amounts at issue: [1]	
In dispute	$302,730
Proposed to be reallocated	$33,637
Notifications:	None

An oral hearing on this petition was scheduled for December 15, 2010. However, in an email to the Board Proceedings Division, petitioner requested a decision on the record without oral hearing.

UNRESOLVED ISSUE

Whether the disputed sales were subject to the local sales tax because the orders were taken at the retailer's Torrance office, even though the goods were shipped to California customers from outside this state. We conclude that these sales occurred outside California and were thus subject to local use tax, and that a portion of the amount allocated to petitioner should be deallocated to the various countywide pools as local use tax.

The retailer whose local taxes are the subject of this petition sold technology products through an office located in Torrance, California, where the operation included a computer server used to

[1] The combined amount is based on the retailer's actual local tax reported to the various countywide pools for the period January 1, 2003, through June 30, 2006 ($336,367). Also at issue is the amount of local tax the retailer reported to petitioner for the period July 1, 2002, through June 30, 2004 ($86,301). If the petitioner were to prevail on all issues, approximately $336,367 would be reallocated to petitioner from the countywide pools, less the amount petitioner already received as its share of the countywide pools. If, instead, our recommendation is upheld to grant a portion of the petition in accordance with the Decision and Recommendation and deny the remainder, approximately $33,637 (10%) would be reallocated to petitioner from the countywide pools and $77,671 (90% ($86,301-$8,630)) would be "deallocated" from petitioner to the countywide pools, resulting in a net deallocation of about $44,034.

maintain a website for Internet sales. Of the $422,668 local tax reported for the period at issue, the retailer reported $86,301 directly to petitioner and $336,367 to the countywide pools where the goods were shipped. During an audit of the retailer, the Sales and Use Tax Department (Department) discovered that goods for Internet orders downloaded at the Torrance sales office were shipped by common carrier to California customers from the retailer's out-of-state inventory located in Memphis, Tennessee, or from the California inventory of the retailer's vendors. The Department estimates that the sales drop-shipped from California inventory represented 10 percent of the sales at issue, and petitioner does not dispute that estimate. The Department thus computes that about $42,267 (10 percent of $422,668) of the local tax reported was local sales tax, which should have been reported directly to petitioner, and the remainder of the local tax reported was local use tax, which should have been reported to the countywide pools where the goods were shipped. Therefore, the Department concludes that the retailer has overstated the amount of local tax it reported directly to petitioner by about $44,034 ($86,301 – $42,267) and that a deallocation of that amount from petitioner to the countywide pools is warranted.

The Department asserts that the remaining sales occurred outside California because title passed outside California at the time of shipment, meaning that the applicable tax was use tax. (Cal. U. Com. Code, § 2401; see Cal. Code Regs., tit. 18, § 1628, subd. (b)(3)(D).) The Department maintains that the terms and conditions of sale were as provided on the retailer's website, which indicates that title passed from the retailer to the customer at the time of shipping. In addition, the Department indicates that the shipping terms were "FOB Memphis."[2]

Petitioner's primary contention is that the sales for goods shipped by common carrier to California customers from Tennessee were subject to the local sales tax. In support, petitioner asserts that Revenue and Taxation Code section 7205, subdivision (a), contains a conclusive presumption that all sales negotiated at a California place of business are consummated at that location and that California Code of Regulations, title 18, section (Regulation) 1802, subdivision (a) is consistent with

[2] Although the Department did not provide invoices issued by this retailer, it did provide sales invoices issued by the retailer's affiliates, which it regards as representative of those issued by retailer.

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this interpretation. Petitioner further contends that subdivision (a)(2)(A) of Regulation 1620 provides that participation by a California place of business is sufficient to justify imposition of the sales tax even with respect to sales involving shipment of property from out of state. Also, petitioner, while not conceding this primary argument, contends that the shipping terms stated on an invoice do not necessarily represent evidence of the terms of the contract of sale. Petitioner further asserts that certain statements in the Annual Reports of the retailer's parent company should be given more weight than the contract or shipping terms.

Petitioner appears to argue that the rules for determining whether the applicable tax is sales tax or use tax are different for local tax imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law than for state tax imposed under the Sales and Use Tax Law. In that regard, petitioner asserts that the local *sales* tax rules of section 7205 control whether the local tax is sales tax or use tax. Petitioner is mistaken; section 7205 explicitly applies *if* the local tax is sales tax. That is, we must first determine that the local tax *is* a sales tax before section 7205 is relevant. Similarly, petitioner's reliance on Regulation 1620, subdivision (a)(2)(A) is mistaken. Subdivision (a)(1) of Regulation 1620 explicitly states, "If title to the property sold passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transactions."

Also, we find unpersuasive petitioner's assertion that the shipping terms stated on an invoice do not necessarily represent evidence of the terms of the contract of sale. While petitioner is correct that the provisions of UCC section 2401 look to the terms of a contract for title passage, these provisions do not focus only on a document called a "contract" and thus apply even when the document is called something else (e.g. agreement or invoice). Moreover, the title passage rules of UCC section 2401 apply in the absence of an "explicit agreement" to pass title at a *prior* time. In this case, the retailer's terms and conditions contain the explicit provision, "Title to items being purchased passes from [the retailer] to purchaser at the time of shipping." Since it is undisputed that the subject goods shipped from the retailer's warehouse in Tennessee, for purposes of the Sales and Use Tax Law, the sales did not occur in California. Accordingly, neither the state sales tax nor the local sales tax applies to the sales at issue. Last, petitioner's assertion that the Annual Report statements should be given more

weight for sales tax purposes than the contract or shipping terms is also misplaced. The Annual Report statements neither reflect the terms of a contract between the retailer and its customers, nor indicate the actual location of the goods at the time of title passage.

In summary, we find that petitioner has not shown that any of the remaining sales occurred in California. Therefore, these sales were subject to local use tax, rather than local sales tax. Accordingly, excluding the sales drop-shipped from California inventory, we find there is no basis for reallocation of the local tax reported to the various countywide pools; however, there is a basis for deallocating $77,671 (90 percent of $86,301) of the local tax reported directly to petitioner for the period July 1, 2002, through June 30, 2004.

RESOLVED ISSUE

With regard to the sales drop-shipped from California inventory of the retailer's vendors, we find that the local sales tax should be directly allocated to petitioner. The Department determined that about $33,637 (10 percent of $336,367) was incorrectly allocated to the various countywide pools for the period January 1, 2003, through June 30, 2006 and should be reallocated directly to petitioner. We recommend granting the petition as to this amount.[3]

OTHER DEVELOPMENTS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

[3] We note that, for the period July 1, 2002, through June 30, 2004, the retailer allocated a portion of its local tax directly to petitioner, and we find that $8,630 (10 percent of $86,301) was properly allocated to petitioner. That allocation represents a matter that is, in effect, resolved because there is no dispute regarding the allocation of $8,630.

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