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CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petitions for Reallocation of)
Local Tax Under the Uniform Local Sales and)
Use Tax Law of:)
CITIES OF ONTARIO, PALM SPRINGS,)
SAN DIEGO, SANTA BARBARA, and)
COUNTIES OF SACRAMENTO, SAN MATEO)
Petitioners)
_____)

Case IDs 525325, 525326
Oral hearing date: March 29, 2016
Decision rendered (finality date): May 16, 2016
Publication due by: September 13, 2016

Representing the Parties:

- For Petitioners Cities of Ontario,
Palm Springs, San Diego, Santa Barbara
and County of Sacramento Eric Myers, Attorney
- For Petitioner San Diego Matt Vespi, Representative
Paul Prather, Attorney
- For Petitioner County of San Mateo Brian J. Wong, Attorney
- For Notified Jurisdiction City of Oakland Christopher Kee, Attorney
- For Business Tax and Fee Department: Scott Claremon, Tax Counsel III (Specialist)
- For Appeals Division: Trecia M. Nienow, Tax Counsel IV

BACKGROUND

The taxpayer was formed in 1983 for the purpose of buying and selling jet fuel. During the period at issue here, taxpayer sold jet fuel primarily to its parent pursuant to master requirement contracts.¹ The jet fuel was delivered to parent’s aircraft at California airports from storage tanks located within the same local taxing jurisdiction except that fuel delivered to aircraft at San Francisco International Airport, which is located in the unincorporated area of San Mateo County, was delivered from storage tanks located in South San Francisco. Thus, there is no dispute that title passed and the

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 decision (see Rev. & Tax. Code, §7056).

1 sales occurred inside California. Nor is there any dispute that taxpayer had an office in Oakland.²
2 Taxpayer reported the tax on the disputed sales as sales tax and directly allocated the local tax to
3 Oakland based on the view that its Oakland office was the place of sale.

4 LEGAL ISSUE

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

6 FINDINGS OF FACT AND RELATED CONTENTIONS

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

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

23 APPLICABLE LAW

24 A retail sale of tangible personal property for use in California is subject to sales or use tax
25 depending on two factors: (1) whether title passes and the sale occurs in California; and (2) whether
26

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.

1 there is some participation in the sale by a California location of the retailer. (Rev. & Tax. Code, §§
2 6051, 6201, 6401; Cal. Code Regs., tit. 18, § 1620, subds. (a)(1), (a)(2), (b)(1).) If the sale occurs in
3 California *and* a California location of the retailer participates in the sale in any way, then sales tax
4 applies. Otherwise, if the sale occurs outside California, or if there is no participation in the sale by a
5 California location of the retailer, then use tax applies. The same rules are applicable to determine
6 whether the local tax is sales tax or use tax. (Rev. & Tax. Code, §§ 7202, 7203; Cal. Code Regs., tit.
7 18, § 1803.)

8 Participation supporting imposition of sales tax on a particular sale must be tied to *that sale*.
9 Under California Code of Regulations, title 18, section (Regulation) 1802, subdivision (a)(1), where
10 the retailer has only one California place of business and that place of business participates in a sale
11 subject to sales tax, that location is the place of sale. For purposes of Regulations 1620 and 1802,
12 participation in the sale not only includes the taking of the order or the delivery of the purchased
13 property from a place of business of the retailer but also includes activities occurring before delivery
14 that are part of the sales process.

15 Where the local tax is sales tax, that tax is allocated to the place of sale. (Rev. & Tax. Code, §
16 7205; Cal. Code Regs., tit. 18, § 1802, subd. (d).) Such place of sale generally receives a direct
17 allocation if that location qualifies for issuance of a seller's permit under Regulation 1699 (i.e.,
18 negotiates sales, takes orders, or maintains a stock of goods under specified conditions), but otherwise,
19 the local sales tax is indirectly allocated to the place of sale through that location's countywide pool.
20 (Article III, paragraph B, of the Agreement for Administration of Local Sales and Use Tax.)

21 ANALYSIS & DISPOSITION

22 The master contracts required parent to submit a purchase order each month that reflected an
23 amount of fuel that was as close as parent could provide to the actual amount parent would require at
24 each applicable location during the following month, and parent was then required to purchase and
25 taxpayer was required to sell parent's actual requirements. That is, while the contracts do not
26 explicitly state that the required purchase orders would be estimates, they implicitly do so, and each
27 contract taken as a whole contemplates that those estimates would be binding purchase orders. Under
28 these circumstances, we find that the nominations constitute purchase orders for purposes of

1 Regulations 1620, subdivision (a)(2)(A) and 1802, subdivision (a)(1).³ Accordingly, we conclude that
2 the disputed sales, which occurred in California with participation by the Oakland office, were subject
3 to state and local sales tax. We also find that taxpayer's Oakland office was its only business location
4 in California. Since that office received purchase orders, it was required to hold a seller's permit under
5 Regulation 1699. Thus, we conclude that the disputed local sales tax was correctly allocated to
6 Oakland.

7 ORDER

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

10 Adopted at Sacramento, California, on August 31, 2016.

11 Fiona Ma _____, Chairwoman

12 George Runner _____, Member

13 Jerome E. Horton _____, Member

14 Diane L. Harkey _____, Member

15 Yvette Stowers _____, Member *

16
17 *For Betty T. Yee, pursuant to Government Code section 7.9.

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28 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.