

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40**

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4 In the Matter of the Petition for Reallocation )  
of Local Tax Under the Uniform Local Sales ) Case ID 626418  
5 and Use Tax Law of: )  
6 CITY OF FILLMORE ) Oral hearing date: June 25, 2014  
7 ) Decision rendered (finality date): July 30, 2014  
Petitioner ) Publication due by: December 1, 2014  
\_\_\_\_\_ )

8 **Representing the Parties:**

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10 For Petitioner: Joseph A. Vinatieri, Attorney  
11 For Notified Jurisdiction: Eric Myers, Attorney  
City of San Diego Mary Lewis, Representative  
12 Paul Prather, Attorney  
13 For Taxpayer: Grace R. den Hartog, General Counsel  
Owens & Minor Distribution, Inc. Richard E. Drooyan, Attorney  
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15 For Sales and Use Tax Department: Scott Claremon, Tax Counsel III (Specialist)  
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17 For Appeals Division: Trecia M. Nienow, Tax Counsel IV

18 **BACKGROUND**

19 Taxpayer sells medical and surgical products. Taxpayer maintained a warehouse in San Diego  
20 and at other locations inside California. Taxpayer opened an office in Fillmore on October 1, 2007.  
21 The sales in dispute here were those made by taxpayer on and after January 1, 2009, pursuant to master  
22 contracts entered into beginning October 1, 2007,<sup>1</sup> where taxpayer delivered the goods from its San  
23 Diego warehouse to California customers. Thus, there is no dispute that the sales were subject to state  
24 and local sales tax because the sales occurred (title passed) in California with participation at least by  
25 taxpayer's San Diego warehouse. (See Cal. Code Regs., tit. 18, § 1620, subd. (a).) However, taxpayer  
26 allocated the local sales tax on these sales to Fillmore based on taxpayer's understanding that the sales  
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28 <sup>1</sup> These master contracts set forth the overall terms for the customers' individual orders, including the cost plus markup pricing formula and the percentage of total purchases the customers were required to make from taxpayer.

1 were principally negotiated by California employees of taxpayer who primarily work in the field or in  
2 their homes, known as “outside sales representatives.”

3 LEGAL ISSUE

4 Whether the local sales tax was incorrectly allocated to Fillmore

5 FINDINGS OF FACT AND RELATED CONTENTIONS

6 The City of San Diego contends that the outside sales representatives did not work out of the  
7 Fillmore office when negotiating the master contracts because the evidence shows that these contracts  
8 were negotiated at the customers’ locations and that the subject representatives do not perform any  
9 sales activities such as soliciting orders, preparing presentations and contacting customers at the  
10 Fillmore office. Instead, since the orders were received and fulfilled by the San Diego warehouse, the  
11 City of San Diego contends that its jurisdiction was the place of sale for the disputed sales under  
12 California Code of Regulations, title 18, section (Regulation) 1802, subdivision (a)(2)(B). However,  
13 while the subject contracts were principally negotiated by the outside sales representatives at the  
14 customers’ locations, the evidence also shows that taxpayer assigned these representatives to work out  
15 of the Fillmore office beginning October 1, 2007 (e.g., taxpayer notified the California employees in  
16 writing that they were “tied administratively to the Fillmore office”), and they thereafter received their  
17 support (administrative and sales) and attended sales meetings at that office.

18 APPLICABLE LAW

19 Local sales tax must be allocated to the place of sale. (Rev. & Tax. Code, § 7205; Cal. Code  
20 Regs., tit. 18, § 1802, subd. (d).) The local sales tax is allocated directly to the jurisdiction of the place  
21 of sale if that location is required to hold a seller’s permit under Regulation 1699, subdivision (a), and  
22 otherwise is allocated indirectly to the jurisdiction of the place of sale through its countywide pool.  
23 When a retailer has more than one California location, as here, the allocation of local sales tax is  
24 determined by the Board’s rules set forth in Regulation 1802, subdivision (a)(2). (Rev. & Tax. Code, §  
25 7205, subd. (b)(1).) When a retailer has more than one California location that participates in the sale,  
26 the sale occurs at the place of business where the principal negotiations are carried on. (Cal. Code  
27 Regs., tit. 18, § 1802, subd. (a)(2)(B).) For these purposes, the following rule applies: “an employee’s  
28 activities will be attributed to the place of business out of which he or she works” (hereafter attribution

1 rule).<sup>2</sup> (*Ibid.*) The Board’s Compliance Policy and Procedures Manual, Chapter 5 (Returns), Exhibit 5  
2 (Traveling Sales Personnel) reflects the Board’s longstanding interpretation of this attribution rule and  
3 states: “The activities of field representatives who report to instate sales locations are attributable to the  
4 instate locations.” Thus, under Regulation 1802, subdivision (a)(2), a traveling salesperson works out  
5 of the office to which he or she reports.

#### 6 ANALYSIS & DISPOSITION

7         Since the evidence shows that taxpayer assigned the outside sales representatives to work out of  
8 the Fillmore office beginning October 1, 2007, and these representatives thereafter received their  
9 support and attended sales meetings at that office, we find that the outside sales representatives report  
10 to the Fillmore office; thus, their sales activities were correctly attributed to the Fillmore office. In  
11 other words, their selling activities are attributed to the Fillmore office even when such activities are  
12 done from their homes, on the road traveling to meet customers at their places of business, or at the  
13 customers’ places of business. Accordingly, we find that the activities of the outside sales  
14 representatives in negotiating the key terms of the master contracts with customers are attributed to the  
15 Fillmore office because it is the place of business out of which they work and thus where the principal  
16 negotiations are carried on. Since the negotiations by the outside sales representatives are associated  
17 with the Fillmore office, we find taxpayer is required to hold a seller’s permit for that office. We  
18 therefore conclude taxpayer correctly allocated the local sales tax to Fillmore. (Cal. Code Regs., tit.  
19 18, §§ 1699, subd. (a), 1802, subd. (a)(2)(B).)

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27 <sup>2</sup> This attribution rule is necessary because sometimes contracts are negotiated on a retailer’s behalf by a person who is not  
28 physically present at any location of the retailer. For example, a retailer’s traveling salesperson may negotiate a sales  
contract during a visit to the customer’s location or such salesperson may conduct negotiations by telephone from his or her  
home office or while “on the road” visiting customers. In such situations, the salesperson’s activities are attributed to the  
location out of which he or she works.

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ORDER

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

Adopted at Sacramento, California, on September 23, 2014.

Jerome E. Horton, Chairman

Betty T. Yee, Member

George Runner, Member

Marcy Jo Mandel, Member\*

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