

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

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4 In the Matter of the Petitions for Reallocation of)
Local Tax Under the Uniform Sales and Use Tax) Case ID 435564
5 Law of:)
6) Oral hearing date: October 30, 2013
CITIES OF FONTANA, LATHROP &)
7 SAN BERNARDINO)
8 Petitioners)

9 **Representing the Parties:**

10 For Petitioners: Robin Sturdivant, Representative
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12 For Notified Jurisdiction:
City of Ontario Robert Cendejas, Attorney
Alan Wapner, Representative
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14 For Taxpayer:
MedCal Sales, LLC James Abrams, Representative
Eric Gerstein, Representative
Robert Kievert, Representative
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17 For Sales and Use Tax Department: Cary C. Huxsoll, Tax Counsel III (Specialist)
18 For Appeals Division: Trecia M. Nienow, Tax Counsel IV

19 **BACKGROUND**

20 Taxpayer opened an office in Ontario pursuant to a location agreement it had entered into with
21 Ontario and, under that agreement, was paid up to 50 percent of the local tax it allocated to Ontario.
22 There is no dispute that the Ontario office was the only California business location of taxpayer.
23 The goods for the sales at issue were shipped to purchasers in California from inventory located
24 at California warehouses in petitioners' jurisdictions. Thus, there is no dispute that title passed and the
25 sales occurred inside California.
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1 LEGAL ISSUE 1

2 Whether taxpayer was the person making the taxable sales to California purchasers.

3 FINDINGS OF FACT AND RELATED CONTENTIONS

4 Petitioners contend that parent (Medline Industries, Inc.) was the person who made the subject
5 sales on grounds that the evidence provided by taxpayer showed that title to the goods passed from
6 suppliers to parent and then from parent directly to the California customers. Specifically, there were
7 invoices from suppliers that listed parent as the purchaser; purchase orders from customers that named
8 parent; and invoices to customers that were prepared by parent showing the Medline logo and the place
9 for making a remittance to a location of parent. However, at the Board hearing, taxpayer's
10 representatives stated that taxpayer purchased the goods for resale from an affiliate (Medline Industries
11 Holdings, LP), and that title to the goods therefore passed from affiliate to taxpayer and then from
12 taxpayer to the California customers. They explained that once taxpayer's California sales staff made
13 a sale to a California customer and a purchase order was sent electronically by the customer to
14 taxpayer, the goods were then purchased by taxpayer from affiliate who drop shipped them on
15 taxpayer's behalf to the California customer. Taxpayer's representatives further explained that
16 sometimes affiliate's suppliers incorrectly identified parent instead of affiliate on their invoices, and
17 that the reason parent appeared to issue sales invoices to California customers in its own name, even
18 though it actually issued the invoices on behalf of taxpayer, was because taxpayer paid parent to
19 perform collection services pursuant to an administrative services agreement. Journal entries and
20 financial statements for the periods at issue showing that taxpayer paid for the subject goods, received
21 revenue for the sale of such goods, and paid parent for administrative and other expenses are consistent
22 with the explanation from taxpayer's representatives.

23 APPLICABLE LAW

24 A sale is a transfer of title to tangible personal property for consideration. (Rev. & Tax. Code,
25 § 6006, subd. (a).) The person who transfers title to the property for consideration is the person who is
26 making the sale.
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1 ANALYSIS & DISPOSITION

2 We find that title to the goods passed from affiliate to taxpayer and then to taxpayer's
3 California customers based on the credible and persuasive explanations provided by taxpayer's
4 representatives and the corroborating journal entries and financial statements provided by taxpayer.
5 Thus, we conclude that taxpayer is the person who made the subject sales to California customers.

6 LEGAL ISSUE 2

7 Whether taxpayer correctly allocated the local tax as sales tax to Ontario.

8 FINDINGS OF FACT AND RELATED CONTENTIONS

9 Petitioners contend that the California sales staff who primarily work from their homes or in
10 the field (outside sales staff) were assigned to taxpayer's out-of-state headquarters location and that
11 this out-of-state location is where sales negotiated by outside sales staff should be attributed. For the
12 California sales staff who work in the Ontario office (inside sales staff), petitioners contend that they
13 do not participate in the sales on grounds that they do not negotiate the sales and simply provide some
14 back-up support to outside sales staff. At the Board hearing, taxpayer's representatives stated that the
15 primary point of contact between taxpayer and its customers for the sales at issue was the outside sales
16 staff and that those outside sales staff received sales-related support from the inside sales staff who
17 work in the Ontario office. Consistent with such statements were declarations signed under penalty of
18 perjury by some inside and outside sales staff who stated that they were employees of taxpayer and
19 knew the Ontario office was their only office for purposes of performing their sales activities and by
20 parent's executive officers who stated that the outside sales staff were assigned to work out of the
21 Ontario office.

22 APPLICABLE LAW

23 A sale is subject to sales tax only if title passes and the sale occurs in California and there is
24 some participation in the sale by a California location of the seller. (Rev. & Tax. Code, §§ 6006,
25 6010.5, 6051; Cal. Code Regs., tit. 18, § 1620, subd. (a)(2)(A).) Where either or both of these
26 conditions are not satisfied, the sales tax does not apply, and thus the applicable tax is use tax. (Rev. &
27 Tax. Code, §§ 6201, 6401.) The same rules are applicable to determine whether the local tax is sales
28 tax or use tax. (Rev. & Tax. Code, §§ 7202, 7203; Cal. Code Regs., tit. 18, § 1803, subd. (a)(1).)

1 Local sales tax is allocated to the jurisdiction of the place of sale under California Code of
2 Regulations, title 18, section (Regulation) 1802, subdivision (a), and this is usually accomplished by
3 allocating the local sales tax directly to such jurisdiction if the retailer's place of business qualifies for
4 issuance of a seller's permit under Regulation 1699, subdivision (a) (i.e., negotiates sales, takes orders,
5 or maintains a stock of goods under specified conditions). Where the retailer has only one California
6 place of business and that place of business participates in a sale subject to sales tax, that location is the
7 place of sale. (Cal. Code Regs., tit. 18, § 1802, subd. (a)(1).) Where the retailer has more than one
8 California place of business, the applicable rules are set forth in Regulation 1802, subdivision (a)(2):

9 (A) If a retailer has more than one place of business in this state but only one place of
10 business participates in the sale, the sale occurs at that place of business.

11 (B) If a retailer has more than one place of business in this state which participate in
12 the sale, the sale occurs at the place of business where the principal negotiations are
13 carried on. If this place is the place where the order is taken, it is immaterial that the
14 order must be forwarded elsewhere for acceptance, approval of credit, shipment, or
15 billing. For the purposes of this regulation, an employee's activities will be attributed to
16 the place of business out of which he or she works.

15 ANALYSIS & DISPOSITION

16 We find credible and persuasive the statements made by taxpayer's representatives that the
17 outside sales staff principally negotiated the subject sales and that they were assigned to work out of
18 taxpayer's Ontario office when they became employees of taxpayer. This means their selling activities
19 are attributed to the Ontario office even when such activities are done from their homes, on the road
20 traveling to meet customers at their places of business, or at the customers' places of business. Thus,
21 the sales are subject to sales tax based on the undisputed fact that title to the goods passed inside
22 California and based on our finding that the Ontario office participated in the sales by virtue of the
23 activities of the outside sales staff. Since the negotiations by the outside sales staff are associated with
24 the Ontario office, we find taxpayer is required to hold a seller's permit for that office. We therefore
25 conclude taxpayer correctly allocated the local tax as sales tax to Ontario. (Cal. Code Regs., tit. 18, §§
26 1620, subd. (a)(2)(A), 1699, subd. (a), 1802, subd. (a).)

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ORDER

It is hereby ordered that the petitions be denied.

Adopted at Sacramento, California, on January 16, 2014.

Jerome E. Horton _____, Chairman

Michelle Steel _____, Member

Betty T. Yee _____, Member

George Runner _____, Member

Marcy Jo Mandel _____, Member*

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