

BEFORE THE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition for Redetermination
Under the Sales and Use Tax Law of:

Holiday World, Inc.
Account: SY EH 23-879641
Case ID: 89000434060

Appearances:

For Petitioner: Suzanne Beaudelaire, Representative

For Sales and Use Tax Department: Jeff Graybill, Tax Counsel

For Appeals Section: John Abbott, Tax Counsel IV

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination for the audit period January 1, 1995, through September 30, 1996. At the Board hearing, petitioner protested on several grounds a portion (\$171,481.29) of a determination representing disallowed interstate commerce sales established on an actual basis.

Petitioner, a corporation, is engaged in the business of selling recreational vehicles (RVs). Among other things, the Sales and Use Tax Department disallowed certain sales in interstate commerce even though petitioner had the RVs delivered out-of-state, since there was evidence that the customers were known California residents and petitioner did not obtain the statement required by Revenue and Taxation Code (“RTC”) section 6247 (“6247 statement”) at the time of the sale. Thus, the Department concluded that although these sales were not subject to sales tax, absent the required 6247 statement, the property sold was presumed to be purchased for storage, use or other consumption in this state, and stored, used or otherwise consumed in this state, and petitioner was required to collect use tax from the purchasers at the time of making the sales at issue. (Rev. & Tax. Code, §§ 6203 and 6247.)

Petitioner provided statements made after-the-fact from these purchasers that they purchased their respective RVs for use outside of California. Petitioner asks the Board to accept these after-the-fact statements, since it contends RTC section 6247 does not provide that the retailer can only avoid use tax liability by obtaining a 6247 statement at the time of sale. Petitioner also contends that it did not know whether these purchasers were in fact California residents.

OPINION

RTC section 6247 raises a presumption that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from the retailer for storage, use or other consumption in this state and stored, used or otherwise consumed in this state. This presumption may be controverted by a statement in writing, signed by the purchaser or the purchaser's authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside this state. This presumption may also be controverted by other evidence satisfactory to the Board that the property was not purchased for storage, use, or other consumption in this state. (Rev. & Tax. Code, § 6247).

We find that if a retailer knows at the time of sale of objective indications of a purchaser's California residency, the retailer is required to collect use tax unless it obtains a 6247 statement from the purchaser at the time of the sale. The objective indications of California residency that we will consider relevant include the maintenance of a family home in California, California bank accounts or business interests, California voting registration, the possession of a California driver's license, or the ownership of California real property. The retailer may not later obtain a 6247 statement from the purchaser to avoid liability for the use tax since it was required to either collect the use tax or obtain the 6247 statement at the time of sale. We require that the retailer obtain the 6247 statement at the time of sale, so it knows how to timely report the sale, i.e., as taxable or nontaxable. Similar to the protection provided by a resale certificate, we allow taxpayers protection against their obligation to collect use tax when they timely obtain a valid 6247 statement.

The retailer's delay in obtaining the 6247 statement is similar to the retailer obtaining a resale certificate after-the-fact. If the retailer does not obtain a 6247 statement at the time of the sale, then the retailer must show the same type of evidence as the California purchaser would, i.e., actual evidence to show the exclusion from use tax is warranted. (See Cal. Code Regs., tit. 18, § 1620, subd. (b)(3).)

With evidence of California driver's licenses, bank accounts, and residential addresses, petitioner had objective indications of its customers' California residency. This is sufficient to require petitioner to either collect the tax or obtain a 6247 statement at the time of sale. Petitioner failed to either timely obtain a 6247 statement or, alternatively, to provide documentary evidence that the purchaser was not in fact a California resident, or if a California resident, purchased the property for use outside this state. Accordingly, the petition is denied.

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Adopted at Sacramento, California, on August 1, 2001.

Claude Parrish _____, Chairman

Johan Klehs _____, Member

Dean F. Andal _____, Member

Marcy Jo Mandel _____, Member*

*For Dr. Kathleen Connell, pursuant to Government Code section 7.9.