

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 LARRY JOHN MCCALLUM,) Account Number SR FHA 99-468940
 dba L M Equipment Sales) Case ID 798989
 6 Petitioner) Imperial, Imperial County

7 Type of Business: Retailer of used farm equipment

8 Liability Period: 04/01/10 – 03/31/13

9 <u>Item</u>	<u>Disputed Amount</u>
10 Disallowed claimed sales in foreign commerce	\$532,800
11 Tax, as determined	\$49,589.03
12 Less concurred	<u>- 9,543.75</u>
13 Balance protested	<u>\$40,045.28</u>
14 Proposed tax redetermination	\$49,589.03
Interest through 09/30/16	<u>13,969.92</u>
15 Total tax and interest	<u>\$63,558.95</u>
Monthly interest beginning 10/01/16	<u>\$ 247.95</u>

16 UNRESOLVED ISSUE

17 **Issue:** Whether an adjustment to the amount of disallowed claimed exempt sales in foreign
 18 commerce is warranted. We conclude that no adjustment is warranted.

19 Petitioner has operated as a retailer of used farm equipment since March 1994. For audit,
 20 petitioner provided his federal income tax returns and sales and use tax returns, sales invoices, resale
 21 certificates, and farm exemption certificates for the audit period, and purchase invoices and a recap
 22 report for 2011. In addition, petitioner provided pedimentos, which, in Mexico, are customs forms that
 23 importers use for importation of goods to Mexico. The Business Tax and Fee Department
 24 (Department), formerly the Sales and Use Tax Department, decided to examine petitioner's claimed
 25 sales in interstate or foreign commerce on an actual basis. Based on its examination of sales invoices
 26 representing claimed sales in interstate or foreign commerce of \$2,323,049 for the audit period, the
 27 Department computed that petitioner's claimed sales to Mexico totaled \$532,800. The Department
 28 examined the pedimentos that petitioner provided to verify the delivery of the equipment into Mexico,

1 but found that, while the pedimentos showed that the equipment at issue entered Mexico, they did not
2 constitute evidence that *petitioner* shipped or delivered the equipment to the purchasers in Mexico.
3 Moreover, during the audit, the Department learned from petitioner that most of the equipment claimed
4 as sales in foreign commerce was picked up by petitioner's customers at his California location.
5 Because sales tax applies when the property is delivered in this state to the purchaser or the purchaser's
6 representative prior to an irrevocable commitment of the property into the process of exportation (Cal.
7 Code Regs., tit. 18, § 1620(C)(1)), the Department disallowed petitioner's claimed exempt sales to
8 Mexico of \$532,800.

9 Petitioner concedes that most of the equipment at issue was picked up by his customers at his
10 California location, but states that he transported some of the equipment to Mexico in his own trucks.
11 Regardless of where his customers took delivery of the equipment, petitioner contends that the
12 equipment at issue was irrevocably committed to the exportation process when it was sold because
13 petitioner's business is located near the Mexican border and the equipment was exported to Mexico
14 within less than a week from the date of sale. Petitioner asserts that the pedimentos he provided
15 substantiate that the farm equipment was exported to Mexico. Petitioner further asserts that any errors
16 in recordkeeping with regard to his claimed foreign commerce sales were not intentional, and that he
17 rectified those errors after the audit.

18 California Code of Regulations, Title 18, section 1620, subdivisions (a)(3)(A) and (a)(3)(C)1
19 expressly state that sales tax applies when the property is delivered to the purchaser in this state
20 whether or not the purchaser's intent is to transport the property to a location in another state or foreign
21 country and whether or not the property is actually transported to an out-of-state location. If the
22 property is diverted in transit to the purchaser in this state, sales tax applies regardless of the
23 documentary evidence that reflects delivery of the property was made to a carrier for shipment to a
24 location out of state. (Cal. Code Regs., tit. 18, § 1620, subd. (a)(3)(A).) Here, petitioner concedes that
25 he transferred most of the equipment at issue to his customers at his California location. Accordingly,
26 these are taxable sales regardless of whether or not the purchasers intended to transport the equipment
27 to a location in a foreign country and whether or not the equipment was actually transported to the
28 foreign country. (Rev. & Tax. Code, § 6051; Cal. Code. Regs., tit. 18, § 1620, subd. (a)(3)(A),

1 (a)(3)(C)1.) While petitioner claims that he delivered some of the equipment to Mexico in his own
2 trucks, he has not provided any documentation, such as delivery receipts or expense vouchers showing
3 delivery expenses, to support this claim. In the absence of documentation or other evidence supporting
4 petitioner's claimed exempt sales in foreign commerce, we find that no adjustment is warranted.

5 **OTHER MATTERS**

6 None.

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9 Summary prepared by Lisa Burke, Business Taxes Specialist III

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