

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 A-PLUS STORAGE CONTAINERS, INC.) Account Number: SR KHO 100-010009
 6 Petitioner) Case ID's 511088, 511095
 7) Kerman, Fresno County

8 Type of Business: Retailer of portable steel shipping containers

9 Liability period: 07/01/08 – 06/30/09 (Case ID 511095)
 01/01/09 – 07/31/09 (Case ID 511088)

10 <u>Item</u>	11 <u>Disputed Amount</u>	
12 Disallowed claimed partial exemptions for farm equipment	\$97,501 (511095)	
13 Recovery of erroneous refund of tax related to partial exemptions	\$ 9,751 (511088)	
	<u>511095</u>	<u>511088</u>
14 Tax as determined and protested	\$5,343.00	\$ 9,750.82
15 Interest through 11/30/11	<u>931.29</u>	<u>1,267.62</u>
16 Total tax and interest	\$6,274.29	\$11,018.44
17 Payments	<u>- 5,255.67</u>	<u>- 9,750.82</u>
18 Balance Due	<u>\$1,018.62</u>	<u>\$ 1,267.62</u>
19 Monthly interest beginning 12/1/11	<u>\$ 0.44</u>	None

18 UNRESOLVED ISSUE

19 **Issue:** Whether the sales at issue qualify for the partial exemption from tax for sales of farm
 20 equipment. We find that they do not qualify.

21 Petitioner purchased used portable steel shipping containers from shipping companies and then
 22 sold them to farmers for use in a general storage capacity. Petitioner accepted partial exemption
 23 certificates from its customers, and it claimed the partial exemption on amended returns for periods
 24 prior to July 1, 2008, and on original returns for the period July 1, 2008, through June 30, 2009. The
 25 Sales and Use Tax Department originally concluded that the partial exemptions claimed by petitioner
 26 were valid, but upon re-examination of the issue, reversed that finding. Accordingly, it issued two
 27 determinations, one to recover an erroneous refund of \$9,750.82 granted to petitioner through the
 28 application of credits against returns filed for the period January 1, 2009, through July 31, 2009, and

1 one to assess the tax related to partial exemptions claimed in error on returns for the period July 1,
2 2008, through June 30, 2009.

3 Petitioner contends that its sales of containers were sales of farm equipment that qualified for
4 the partial tax exemption, arguing that the containers qualified as farm equipment because the
5 containers were for use for agricultural storage purposes. Alternatively, petitioner contends that, even
6 if the partial exemption were not applicable to these sales, petitioner should be relieved of the sales tax
7 at issue because it took timely exemption certificates in good faith from its customers.

8 The applicable partial exemption applies to purchases by a qualified person of farm equipment
9 and machinery, and parts thereof, to be used primarily in producing and harvesting agricultural
10 products. (Rev. & Tax. Code § 6356.5; Cal. Code Regs., tit. 18, 1533.1, subd. (a).) Farm equipment
11 and machinery includes agricultural operation structures, which are single purposes agricultural or
12 horticultural structures as defined in Treasury Regulation 1.48 – 10 (26CFR 1.48 – 10). A structure
13 does not qualify if it is used for any nonpermissible purposes, including “more than incidental” use for
14 storing feed and equipment. The containers at issue here were sold for use solely for the storage of
15 farm equipment and chemicals, and thus do not constitute agricultural operation structures. We find
16 that the subject containers are not farm equipment (Cal. Code Regs., tit. 18, § 1533.1) and that the
17 subject sales thus did not qualify for the partial exemption.

18 A retailer who takes a timely partial exemption certificate in good faith from a qualified person
19 is relieved of liability for the tax subject to exemption. (Cal. Code Regs., tit. 18, § 1533.1, subd.
20 (c)(1).) However, a retailer is not regarded as having taken an exemption certificate in good faith
21 where the retailer has knowledge that the property is not subject to a partial exemption. (Cal. Code
22 Regs., tit. 18, § 1533.1, subd. (c)(5).) A retailer is expected to exercise reasonable judgment with
23 respect to its acceptance of exemption certificates, and we find that, had petitioner exercised
24 reasonable judgment, it would have known that containers used to store farm equipment and chemicals
25 do not constitute farm equipment. We therefore conclude that petitioner did not take the partial
26 exemption certificates in good faith and the tax owed by petitioner thus cannot be relieved based on its
27 acceptance of partial exemption certificates.

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OTHER DEVELOPMENTS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III