

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)

<u>Item</u>	<u>Disputed Amount</u>	
11 Disallowed claimed partial exemptions for farm equipment	\$49,734 (511095)	
12 Recovery of erroneous refund of tax related to partial exemptions	\$ 9,751 (511088)	
	<u>511095</u>	<u>511088</u>
13 Tax as determined	\$5,343.00	\$9,750.82
14 Adjustment - Sales and Use Tax Department, post D&R	- 2,728.00	00.00
15 Proposed redetermination, protested	<u>\$2,615.00</u>	<u>\$9,750.82</u>
16 Proposed tax redetermination	\$2,615.00	\$9,750.82
17 Interest	<u>511.38</u>	<u>1,267.62</u>
17 Total tax and interest	\$3,126.38	\$11,018.44
18 Payments	- 3,126.38	- 11,018.44
18 Balance Due	<u>\$ 00.00¹</u>	<u>\$ 00.00</u>

19 This matter was scheduled for Board hearing on November 16, 2011, and again on February
 20 29, 2012, but was postponed each time so that the Sales and Use Tax Department (Department) could
 21 perform additional investigation. The Department's investigation has resulted in an adjustment, which
 22 is discussed under Other Matters.

23 UNRESOLVED ISSUE

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

26 _____
 27 ¹ After the most recent adjustments, the amount petitioner paid exceeded the amount due. A refund of \$858.96 has been
 28 processed.

1 Petitioner purchased used portable steel shipping containers from shipping companies and then
2 sold them to farmers for use in a general storage capacity. Petitioner accepted partial exemption
3 certificates from its customers, and it claimed the partial exemption on amended returns for periods
4 prior to July 1, 2008, and on original returns for the period July 1, 2008, through June 30, 2009. The
5 Department originally concluded that the partial exemptions claimed by petitioner were valid, but upon
6 re-examination of the issue, reversed that finding. Accordingly, it issued two determinations, one to
7 recover an erroneous refund of \$9,750.82 granted to petitioner through the application of credits
8 against amounts petitioner reported due after claiming the partial exemption on returns filed for the
9 period January 1, 2009, through July 31, 2009, and one to assess the tax related to partial exemptions
10 claimed in error on returns for the period July 1, 2008, through June 30, 2009.

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

16 The containers at issue here do not meet the requirements to be considered “farm equipment
17 and machinery,” because they were not used primarily in producing and harvesting agricultural
18 products. (Rev. & Tax. Code § 6356.5, subd. (a); Cal. Code Regs., tit. 18, 1533.1, subd. (a).) Further,
19 they do not constitute agricultural operation structures because they were sold for use solely for the
20 storage of farm equipment and chemicals. (Cal. Code Regs., tit. 18, § 1533.1, subd. (b)(1)(A).)
21 Accordingly, we find that the subject containers are not farm equipment and that the subject sales thus
22 did not qualify for the partial exemption.

23 With respect to petitioner’s contention that it should be relieved of the sales tax at issue because
24 it took timely exemption certificates in good faith from its customers, had petitioner exercised
25 reasonable judgment, it would have known that containers used to store farm equipment and chemicals
26 do not constitute farm equipment. We therefore conclude that petitioner did not take the partial
27 exemption certificates in good faith and the tax owed by petitioner thus could not be relieved based on
28 its acceptance of partial exemption certificates.

OTHER MATTERS

In its review of this case in preparation for the Board the originally scheduled Board hearing, the Department noted that it had initially found, in February 2009, that the exemption should apply, although it reversed its initial finding and formally notified petitioner by letter dated September 3, 2009. Thus, the Department concluded that petitioner may have relied on that initial, incorrect, finding, when it did not collect tax reimbursement or report tax with respect to the claimed deductions for the returns filed for the first and second quarter 2009. On that basis, the Department recommends the amounts of tax due for those quarters be relieved, reducing the measure of tax for case ID 511095 by \$47,767, from \$97,501 to \$49,734.

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