

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
MEDISON AMERICA, INC. ) Account Number: SR EA 99-149768  
 ) Case ID 417171  
Petitioner ) Cypress, Orange County

Type of Business: Sales of ultrasound equipment

Audit Period: 4/1/03 to 3/31/06

<u>Item</u>	<u>Amount in Dispute</u>
Unreported use of equipment	\$82,510
	<u>Tax</u>
As determined	\$16,540.03
Adjustments: Appeals Division	- 2,246.72
Proposed redetermination	\$14,293.31
Amount concurred in	<u>-7,898.79</u>
Protested	<u>\$ 6,394.52</u>
Proposed tax redetermination	\$14,293.31
Interest through 6/30/10	<u>7,097.07</u>
Total tax and interest	<u>\$21,390.38</u>
Monthly interest beginning 7/1/10	<u>\$83.38</u>

This matter was scheduled for Board hearing on September 23, 2009, but was postponed because petitioner requested additional time to prepare its arguments. It was then rescheduled for Board hearing on February 24, 2010, but petitioner did not respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioner that this matter will be presented to the Board for decision without oral hearing. Subsequently, petitioner contacted BPD and requested a Board hearing in June 2010.

**UNRESOLVED ISSUE**

**Issue:** Whether the use of equipment withdrawn from resale inventory for training purposes is taxable, and if so, whether the audited measure of tax is excessive. We conclude that the use is subject to tax and that no adjustments are warranted.

1           Petitioner is a California wholesaler of ultrasound equipment manufactured by a separate but  
2 related South Korean company. Petitioner purchased the equipment from the manufacturer without  
3 paying any tax or tax reimbursement, for resale to independent dealers for their resale to end-users.  
4 During the audit period, petitioner regularly offered two-day classes to train persons who purchased  
5 equipment from the independent dealers. The cost of the class for one person was included by  
6 petitioner in the price it charged its dealers for the equipment, and it charged a separate fee if the  
7 ultimate purchaser wanted to send more than one person to the class. Petitioner withdrew equipment  
8 from its inventory on a rotating basis for use in these classes, placing the equipment back into  
9 inventory after the class and removing other equipment for the next class. Petitioner essentially used  
10 all equipment in its inventory in this way before selling the equipment. Petitioner did not track the use  
11 of the equipment or produce logs or other records detailing the use of each unit, nor did it pay any tax  
12 on its use of the equipment.

13           The Sales and Use Tax Department (Department) concluded that petitioner's use of the  
14 equipment was subject to tax, and rather than assessing tax on the cost of the equipment, decided it was  
15 appropriate to assess tax based on the fair rental value of petitioner's use of the equipment. After  
16 looking at the daily rental value of other items, the Department used a short-term equipment rental rate  
17 calculator for farm equipment based on an equipment cost of \$98,500, a five-year useful life, a five  
18 percent interest rate, a trade-in value of 20 percent (\$19,700), and 576 hours per year of use (assuming  
19 one two-day class per month, 2 x 24 x 12), with all other values set at zero, to calculate a rental value  
20 of \$37.37 per hour, which translates to \$298.96 per 8-hour day. Ultimately, the Department used what  
21 it considered to be a conservative daily rental value of \$250. The Department concluded that there  
22 were 446 days of use based on 223 trainees having attended the two-day training session, and thus  
23 calculated an unreported taxable fair rental value of \$111,500.

24           Petitioner provided some documentation and a reference to Mr. Martin Harris, who owns a  
25 company that apparently rents similar equipment as the ones at issue here. We contacted Mr. Harris,  
26 who provided us with information regarding his rentals, the most comparable of which was the rental  
27 of Medison equipment with an approximate retail value of \$75,000 to \$100,000 for \$5,000 per month  
28 for a six-month agreement. We averaged the upper and lower estimated retail value to calculate that

1 the monthly rental under the six-month agreement was approximately 5.7 percent of the equipment's  
2 retail price. Although we believe that the Department's method is reasonable, we thought that perhaps  
3 using the rental of similar equipment would be more accurate, and to give petitioner the benefit of the  
4 doubt, we recommended that the Department use 5.7 percent of the equipment's retail price as the  
5 basis for the fair rental value per month, and then to reduce that amount to a daily rental.

6 The Department prepared a reaudit dated November 19, 2008, which applied 5.7 percent to the  
7 average selling price of the equipment, and computed a daily fair rental value of \$185 per equipment  
8 used. Applying the daily fair rental value to the number of trainees for a two day period resulted in the  
9 reduction of the unreported fair rental value from \$111,500 to \$82,510.

10 A person who uses tangible personal property held for resale must pay use tax on that use,  
11 unless the use is exempt from tax. (Rev. & Tax. Code, §§ 6201, 6202.) We agree with the  
12 Department's decision to impose tax only on the fair rental value of the equipment petitioner removed  
13 from inventory for use prior to reselling it, rather than imposing tax on the full cost of the equipment.  
14 We believe that the fair rental value established based on our recommendation is an entirely reasonable  
15 estimate of that fair rental value (and perhaps on the low side), and petitioner has not provided any  
16 other evidence that would warrant further reduction to the unreported taxable fair rental value.

17 **OTHER DEVELOPMENTS**

18 None.

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21 Summary prepared by David H. Levine, Tax Counsel IV  
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