

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for)
Redetermination and Claim for Refund)
Under the Sales and Use Tax Law of:) Account Number SR EH 97-888157
SWERTFEGER'S EQUIPMENT, INC.) Case ID's 420299, 431085
Petitioner/Claimant) Grand Terrace, San Bernardino County

Type of Business: Sales of trailers, parts, and accessories, and repairs
Audit period: 01/01/02 – 06/30/05
Claim period: 01/01/05 – 03/31/05

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed nontaxable or exempt sales	\$216,393
Extax purchases of mobile transportation equipment subject to use tax	\$674,096
Claimed refund of tax paid on trailer rental receipts	\$ 15,919
Tax as determined	\$122,257.28
Post-D&R adjustment	- 32,011.92
Proposed redetermination	\$ 90,245.36
Less concurred	- 21,232.42
Balance, protested	<u>\$ 69,012.94</u>
Proposed tax redetermination	\$ 90,245.36
Interest through 05/31/12	55,758.62
Amnesty interest penalty	856.00
Total tax, interest, and penalty	<u>\$146,859.98</u>
Payments	- 15,163.53
Balance Due	<u>\$131,696.45</u>
Monthly interest beginning 06/01/12	<u>\$ 437.98</u>

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the disallowed claimed nontaxable or exempt sales. We find no further adjustments are warranted.

Petitioner sells and leases new and used trailers, sells parts and accessories, and performs repairs. Although petitioner maintained records, a considerable portion of those records had been destroyed, either in a fire or as the result of a significant computer failure. The Sales and Use Tax

1 Department (Department) found that the records were most complete for the year 2004, and it used that
2 year as a test period.

3 In its review of claimed nontaxable or exempt sales, the Department found: (1) claimed exempt
4 sales in interstate commerce for which petitioner did not provide adequate documentation, (2) charges
5 for taxable fabrication labor erroneously recorded as nontaxable repair labor, (3) taxable sales of parts
6 not recorded as taxable, and (4) taxable charges for shipping, registration, DMV fees, and “road ready”
7 fees that were not reported as taxable. At the conference, petitioner asserted that several transactions
8 regarded as errors should be removed from the computation of the understatement. In the D&R, we
9 found that several adjustments were warranted, and the recommended adjustments have been made by
10 the Department, which reduced the percentage of error in claimed exempt or nontaxable sales from 6.4
11 percent to 5.57 percent in the post-D&R reaudit.

12 The items remaining in dispute are: (1) a requested adjustment for bad debts for which
13 petitioner had claimed, and been allowed, a deduction on a return, (2) claimed duplications of
14 documentation charges and similar fees that were, in fact, not duplications but charges or fees related
15 to sales of more than one trailer, (3) claimed exempt sales in interstate commerce for which the bills of
16 lading do not appear authentic and for which petitioner has not provided separate evidence that the
17 amounts shown on the bills of lading were in fact paid to the common carrier, (4) charges petitioner
18 argues were nontaxable that were in fact taxable as services in connection with taxable sales, (5) a sale
19 for which petitioner has documented that tax was charged on the invoice, but has not shown that the
20 sale was recorded as a taxable sale in the sales journal or reported as a taxable sale on a return, and (6)
21 fees petitioner claims are not subject to tax for which petitioner has not provided supporting
22 documentation. We find that all documented adjustments have been made, and we find no further
23 adjustments are warranted.

24 **Issue 2:** Whether adjustments are warranted to the amount of unreported purchases of mobile
25 transportation equipment subject to use tax. We find no adjustments are warranted.

26 The Department found that petitioner had leased trailers withdrawn from ex-tax inventory, and
27 it had not made a timely election to report and pay tax on the fair rental value of the trailers (which
28 constitute mobile transportation equipment (MTE)). The Department concluded petitioner owed use

1 tax on the purchase price of the 42 trailers, which totaled \$674,096. Petitioner contends that some or
2 all of the disputed tax is not due, and with respect to 24 of the trailers, petitioner contends that the
3 liability for tax rests with one of the two companies from which it allegedly either leased or purchased
4 the trailers. As support, petitioner has provided unsigned, incomplete documents that purportedly
5 represent the transactions between petitioner and the two other companies. We find that the
6 documentation provided by petitioner is inadequate to support its position. However, even if we were
7 to conclude that the other two companies had leased or sold the trailers to petitioner, our conclusion
8 would remain the same because petitioner used its dealer license and Report of Sale books to transfer
9 title to all of the subject trailers to itself, pursuant to retail sales. Since petitioner is a licensed dealer
10 and retail sales of those trailers were made through petitioner, and petitioner provided notice of the
11 transfers to the Department of Motor Vehicles, petitioner must remit tax to the Board with respect to
12 those sales in the same manner as a licensed dealer making those sales on its own account. (Rev. &
13 Tax. Code, § 6275, subd. (a).) Accordingly, we find that petitioner owes tax on the purchase price of
14 the trailers.

15 Petitioner also argues that it sold 15 of the 24 trailers just discussed to a lessor who
16 immediately leased them to petitioner without making a timely election to pay tax on the fair rental
17 value of the trailers. Petitioner asserts that the lessor (its purchaser) is solely responsible for any tax
18 due. However, since a lease of MTE is a consumption of tangible personal property by the lessor,
19 petitioner could only avoid the sales tax otherwise due on its sale of the trailers if the lessor had issued
20 a resale certificate to petitioner for the limited purpose of reporting tax on the use of the MTE
21 measured by fair rental value. (Rev. & Tax. Code, §§ 6092.1, 6094, subd. (d) and 6244, subd. (d).)
22 Petitioner did not take such a timely resale certificate and thus cannot avoid the tax it owes as the
23 retailer on the basis that its purchaser immediately leased the MTE, whose sale petitioner processed
24 through its own license (that is, if petitioner were correct that it sold the 15 trailers for lease back, it
25 would nevertheless still be liable for tax). Accordingly, we find no adjustments are warranted to the
26 ex-tax purchases of trailers withdrawn from inventory for leasing.

27 **Issue 3:** Whether the claimed refund of tax paid on trailer rental receipts in the first quarter
28 2005 should be granted. We find the claim for refund should be denied.

