

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

1
2
3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)
5 DATA PHYSICS CORPORATION) Account Number: SR Y GH 26-761104
6 Petitioner) Case ID's 425711 and 473226
7 _____) San Jose, Santa Clara County

8 Type of Business: Manufacturer of computer chip testing equipment

9 Audit period: 01/01/04 – 12/31/06¹

10	Tax as determined for both determinations	\$9,606.37
	Pre – D&R adjustment	+ 43.24
11	Post Board hearing adjustment	<u>- 9,394.96</u>
	Proposed redetermination	\$ 254.65
12	Less concurred	<u>- 254.65</u>
13	Balance, protested	<u>\$ 00.00</u>
	Proposed tax redetermination	\$254.65
14	Interest	<u>83.76</u>
15	Total tax and interest	\$338.41
	Payments	<u>-338.41</u>
16	Balance Due	<u>\$ 00.00²</u>

17 The Board held a hearing regarding this matter on November 16, 2011, and it ordered the Sales
18 and Use Tax Department (Department) to review additional documentation presented to the Board in
19 support of petitioner's contention that it did not make a taxable use of equipment withdrawn from
20 resale inventory. Based on that additional documentation, as more fully explained below, the
21 Department concluded that petitioner did not make a taxable use of the equipment and that the disputed
22 amount, \$113,878, should be reduced to zero. We concur and make that recommendation, and there is
23 no longer any amount of understatement in dispute.

24
25
26 _____
27 ¹ To prevent the expiration of the statute of limitations for the year 2004, the Department issued a Notice of Determination
for that year (case ID 425711) and subsequently issued a separate determination for the period January 1, 2005, through
December 31, 2006 (case ID 473226).

28 ² Petitioner has made payments in excess of the amount due of \$4,548.10, and a refund of that amount is in process.

RESOLVED ISSUE

Petitioner manufactures and sells equipment to test computer chips. During the audit period, petitioner employed sales personnel in California and hired independent contractors to sell its equipment outside California. Petitioner removed certain equipment from its resale inventory and provided the equipment to its employees and independent contractors, usually for six months to a year. Although petitioner recorded the cost of the equipment in a fixed asset account and depreciated that cost on its income tax returns, it presented evidence during and after the Board hearing to show that the depreciation was taken in error. Petitioner has also made appropriate corrections to its records.

Based on its review of the evidence provided after the Board hearing, the Department concludes that petitioner did not make any use of the equipment for purposes other than demonstration and display while holding the equipment for resale. Therefore, the Department finds that petitioner has not made a taxable use of the equipment. We concur, and we recommend that the audited cost of merchandise withdrawn from inventory for use be reduced from \$113,878 to zero.

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