315.0206

485-3723

San Jose - District Principal Auditor

Sept. 17, 1982

Headquarters - Tax Counsel (GJJ)

This is in response to your memorandum of September 8, 1982.

As you point out, the Board granted the petition for redetermination submitted by the above taxpayer in relation to the question as to whether "service charges" are includable in gross receipts where road service results in the sale of a new tire.

The decision in that case should be applied to persons similarly situated. It was the feeling of the Board, at the time of the hearing, that the services performed were not sufficiently related to the sale as to be regarded as services a part of the sale under Revenue and Taxation Code Section 6012. The staff's view to the contrary did not prevail.

j:alicetilton

(916) 322-3334

Dear Mr. :

Enclosed is a copy of the decision and recommendation of hearing officer pertaining to the petition of your above referenced client for redetermination under the Sales and Use Tax Law. I have recommended that no adjustment be made.

If your client wishes to have an oral hearing before the Board, a written request should be mailed to this office, attention of Mr. H. K. Lackmann, Supervising Auditor. If such a request is not received within twenty days, the hearing officer's recommendation will be presented to the Board for final consideration and action. Official notice of that action will be mailed to you in due course.

Very truly yours,

H. L. Cohen
Tax Counsel

LJC:ss

Enclosure

cc: District Administrator:
Attached are copies of the decision and recommendation
and also the audit work papers.

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

In the Matter of the Petition for Redetermination of State and Local Sales and Use Taxes	)	DECISION AND RECOMMENDATION
Petitioner	)	

The above-entitled matter came on regularly for hearing on November 24, 1980 in San Jose, California, before H. L. Cohen, Hearing Officer.

Appearing for Petitioner:

Appearing for the Board:

Observer:

Protest

Petitioner protests the assertion of tax on amounts claimed to be from service receipts. Tax was asserted based on an audit covering the period from July 1, 1975 through June 30, 1978. A deficiency determination was issued on March 30, 1979. The amount upon which the protested tax is based is $41,084 for state, local and county tax purposes and $22,265 for transit district tax purposes.

Contention

Petitioner contends that the charges sought to be taxed are exempt charges for services.

Summary

1. Petitioner is a corporation engaged in wholesale and retail sales of tires and in repairing tires. The last previous audit was for the period through December 31, 1974.

2. Petitioner operates trucks which are equipped to repair and change tires and wheels on automobiles and trucks. When called, petitioner dispatches a truck to the location of the disabled automobile or truck and makes repairs on the spot. If a new tire is needed, the tire is carried on petitioner's truck and installed at the repair site. Petitioner publishes a price list for various services and makes charges in accordance with the price list. The price list shows flat rate and hourly charges for service calls. These are charges made for providing service via petitioner's truck. The service call charge is not made if the customer brings his vehicle to petitioner's shop. The service call charge is in addition to any charges for dismounting, mounting, changing, or balancing tires or wheels, and is separately stated on the invoice. Petitioner does not charge tax reimbursement or pay tax on service call charges regardless of whether only repairs are made or whether a new tire is delivered and sold.

3. The auditor regarded service call charges made in connection with sales of tires as taxable receipts from services related to the sale of the tires. The auditor took a sample consisting of every 100th invoice and calculated an error factor which was applied to petitioner's claimed deductions. Petitioner does not question the sampling method.

4. Petitioner contends that the service calls are part of installation or repair activities and are exempt from tax under Sales and Use Tax Regulation 1546. The charge is actually a minimum labor charge since it is converted to an hourly charge if that results in a lower price to the customer. Petitioner states that if a customer orders only a tire without installation, the tire is delivered by pickup truck rather than the service truck and no delivery charge is made.

Analysis and Conclusions

1. Section 6012(c)(3) of the Revenue and Taxation Code and Sales and Use Tax Regulation 1546 provide that charges for labor or services used in installing or applying [illegible] sold are not subject to tax. With respect to petitioner's activities, it is clear that mounting and dismounting charges are installation charges which are not subject to tax. Regulation 1546 further provides in subdivision (b)(3) [illegible]

the retail value of the parts and materials furnished in connection with repair work is 10 percent or less of the total charge and if no separate charge is made for such property, no tax applies to the charge made by the repairman. Thus, where petitioner performs only repairs, no tax applies to any of petitioner's charges. The auditor correctly did not assert tax on either of these two types of charges.

2. Subdivision (b)(1) of Section 6012 of the Code provides that the amount subject to tax includes charges for any services that are a part of the sale of tangible personal property. Petitioner's service call charges are for the service of providing a service truck. When a tire is sold from the service truck, the providing of the service truck can only be regarded as a service related to the sale of the tire. The charge for that service must be included in the amount subject to tax, unless the conditions exist for regarding the charge as an exempt transportation charge. Subdivision (c)(7) excludes from the amount subject to tax transportation charges if those charges are separately stated, if shipment is made directly to the purchaser, if the charges are reasonable, and if title to the property sold passes prior to the transportation. The service call charge is separately stated and shipment is made directly to the purchaser. However, while the charge is reasonable for providing the service truck, it is not reasonable solely as a transportation charge. Further, title to the tire does not pass prior to transportation. I conclude that the service call charge is not an exempt transportation charge, and that tax applies to service call charges where the transportation includes the sale of a tire or tube.

Board at subsequent Board hearing determined that the services performed were not sufficiently related to the sale of tires to be regarded as services which were part of the sale of the tire
SFG 7/10/

Recommendation

Redetermine without adjustment.

H. L. Cohen, Hearing Officer

Dec. 26, 1980
Date

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
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JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

ERNEST J. DRONENBURG, JR.
Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

BURTON W. OLIVER
Executive Director

January 27, 1995

Dear

Your letter dated August 4, 1994 was referred to the Legal Division for response by memorandum dated October 6, 1994 from the Board's Santa Rosa district office. We apologize for the delay in responding. You inquire as to the application of sales tax to a $16 "mileage and truck charge" made by in connection with its service calls.

Our understanding is that the service calls in question here involve the sale and repair of refrigeration equipment. For purposes of this opinion, we assume that none of the transactions are construction contracts as explained in Regulation 1521. The memorandum from the district office indicates that President of stated that customers are given the following explanation of the "mileage and truck charge":

> "[The charge is for] having trucks stocked with all necessary tools and common material to complete a service call without making a trip to a supply shop, saving add'l labor charges, and it covers all supplies on the truck.... [P]art of the charge is for small fittings, wiring, etc. purchased for resale and sold but not specifically enumerated under 'Materials Used.'"

In addition to the itemized charge for the "mileage and truck charge" and for the tangible personal property it sells as part of the service call, makes itemized charges for travel time to and from the jobsite and for time spent at the site.

Discussion

A retailer such as owes sales tax, measured by gross receipts, on its retail sale of tangible personal property in California, unless the sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) The taxable gross receipts include the total amount of the retailer's sale price of the property, without any deduction on account of the cost of property sold, cost of materials used, labor, or service cost, interest paid, losses, or any other expense unless specifically excluded from taxation by statute. (Rev. & Tax. Code § 6012(a).) That is, charges for services which are part of the retail sale of tangible personal property are included in the taxable gross receipts. Although there is a specific exclusion for certain separately stated transportation charges (Rev. & Tax. Code § 6012(c)(7)), the charge about which you inquire is not for transportation, although itemized as "mileage and truck" charge. Instead, this is in the nature of a restocking and preparation charge. Thus, if the charge is regarded as part of the taxable retail sale of tangible personal property, the charge is subject to sales tax.

The Board has adopted Regulation 1546 to explain the application of tax to repairers such as

> "(1) WHEN RETAILERS. If the retail value of the parts and materials furnished in connection with repair work is more than 10 percent of the total charge, or if the repairman makes a separate charge for such property, the repairman is the retailer and tax applies to the fair retail selling price of the property.
>
> "If the retail value of the property is more than 10 percent of the total charge, the repairman must segregate on the invoices to his customers and in his records the fair retail selling price of the parts and materials from the charges for labor of repair, installation, or other services performed. "Total charge" means the aggregate of the retail value of the parts and materials furnished or consumed in making the repairs, charges for installation, and charges for labor of repair or other services performed in making the repairs, including charges for in-plant or on-location handling, disassembly and reassembly. It does not include pick-up or delivery charges.

"If the retailer does not make a segregation, the retail selling price of the parts and materials will be determined by the board based on information available to it.

"(2) WHEN CONSUMERS. If the retail value of the parts and materials furnished in connection with the repair work is 10 percent or less of the total charge, as defined in (b)(1) above, and if no separate charge is made for such property, the repairman is the consumer of the property, and tax applies to the sale of the property to him." (Reg. 1546(b) (footnotes omitted).)

When the repair involves service only, and furnishes no parts or materials, then none of its charge is subject to sales tax. Sales or use tax applies to the sale to, or use by, of any property it consumes when performing such repairs. When does not furnish any parts for which it makes a separately itemized charge, then it is the consumer of any property it does furnish in connection with the repairs if the retail value of that property is 10 percent or less of the total charge. If such is the case, none of 's charge to the customer would be taxable, and sales or use tax would apply to the sale to, or use by, of any property it consumes (including the property furnished to the customer). When is a consumer of property that it had purchased extax under a resale certificate (e.g., the small fittings, wiring, and other items that you furnish without a separate itemization), must report use tax measured by the purchase price of such property on line 2 of its Sales and Use Tax Return.

When separately itemizes charges for property furnished to the customer, the 10 percent rule discussed in the provision quoted above does not apply. The remainder of this opinion relates to transactions where does separately itemize a charge for parts furnished in connection with its repairs. Sales tax applies to 's gross receipts from the sale of such property. As you understand, the separately itemized charge for the property is taxable. The remaining question is whether part or all of the "mileage and truck" charge is included in the measure of tax on the sale of the property. This charge is, in effect, a charge for overhead expenses. I will therefore discuss the rules applicable to overhead charges made by repair shops, and I will then apply those rules to the charge in question here.

In each of the scenarios discussed below, the repair shop performs repairs and itemizes charges for parts (including any charge for fabrication of parts) and labor (including, e.g., troubleshooting and installation, but excluding fabrication of

parts). The repair shop also makes an additional charge for overhead expenses (there are many different designations used to itemize such charges). The charge for the parts is subject to tax and the charge for the labor is not subject to tax. (Reg. 1546(b)(1).) As in the transaction you present, whether the charge for overhead expenses is subject to tax depends on whether the charge is regarded as related to the sale of the parts, the providing of the labor, or both.

When the overhead charge made by the repair shop is related only to the sale of the parts, the entire charge is subject to tax (e.g., a charge to cover expenses for ordering, inventorying, and storing parts or for transportation of the parts to the repair shop). If, on the other hand, the charge were related solely to the nontaxable labor performed by the repair shop, then none of the charge would be taxable (e.g., a charge solely to cover expenses related to cleaning the oil remaining on the garage floor after draining oil from a car). The final possibility is that the charge, no matter how itemized on the bill to the customer, is actually related to all overhead expenses of the repair shop. We would regard the charge as related to all overhead expenses of the repair shop if the charge cannot be shown to be clearly related solely to nontaxable labor or solely to the taxable sale of tangible personal property. Under these circumstances, a portion of the charge is taxable and a portion of the charge is not taxable, prorated in the same ratio as the itemized taxable charges for parts bears to the itemized nontaxable charges for labor.

I note that we recognize that prorating overhead charges between the taxable portion of the transaction and the nontaxable portion is administratively more difficult (for repair shops and for us) than imposing tax on the entire charge or on none of it. However, when a portion of the charge clearly relates to the taxable retail sale of tangible personal property, the Sales and Use Tax Law requires us to impose tax on at least a portion of the charge. Rather than imposing tax on the entire charge because at some portion of it is attributable to the taxable sale of tangible personal property, we believe that imposing tax only on that portion of the charge actually attributable to the sale of tangible personal property is more equitable. Of course, repair shops who find the required proration more difficult than the charge is worth may wish to incorporate such overhead expenses into their charges for parts and labor rather than have a separate charge for overhead expenses.

's "mileage and truck" charge is related, at least in part, to the sale of parts since it is a charge to ensure that the truck is stocked with all parts that might be sold during the repair. Thus, at least part of the charge is taxable. Arguably,

the entire charge could be regarded as part of the sale of the parts, and hence taxable. However, based on the facts presented to us, we believe that the better view is that the "truck and mileage" charge is related to general overhead expenses of (e.g., restocking of property to be sold *and* restocking of property to be used by such as tools). Thus, we conclude that a portion of the charge is taxable as part of the sale of the parts and a portion of the charge is not taxable as part of the nontaxable service, prorated as explained above.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Supervising Staff Counsel

DHL:cl

cc: Santa Rosa District Administrator

bc: Mr. Glenn A. Bystrom
Mr. William Dunn
Mr. Dennis Fox
Mr. Robert Nunes