

335,0043.875

11/27/90

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
APPEALS DIVISION

In the Matter of the Petition) HEARING
-----)
O A T I O N

Petitioner)

The above-referenced matter came on regularly for hearing before Hearing Officer Susan M. Wengel on July 10, 1990 in Oakland, California.

Appearing for Petitioner:

Appearing for the
Department of Business Taxes:

Protested Item

The protested tax liability for the period October 1, 1984 through June 30, 1987 is measured by:

<u>Item</u>	<u>State, Local and County</u>	<u>BART</u>
C. Disallowed sale for resale	\$1,091,383	\$641,698
of mobile transportation (less 6 agreed)	- 310,761	-310,761
<u>equipment to</u> (16 protested)	\$ 780,622	\$330,937

Contentions of Petitioner

No tax liability exists because the lessor, by contract, appointed the lessee as its agent for reporting any tax due on the leases of the tractors. When the lessee, by the lessor's written authority, reported the tax measured by rental receipts on a timely return, the election to report the tax based on rental receipts was properly implemented.

Summary of Petition

Petitioner is a corporation engaged in business as a truck tractor dealer. It also operates a repair shop and sells parts. During an audit by the Department of Business Taxes (Department) it was found that petitioner sold 22 tractors to _____, out-of-state lessor. Delivery of the trucks was to the lessee, _____ in California.

Petitioner considered these sales to be exempt as sales for resale. During the audit, the Department noted that there was no resale certificate on file for the claimed sales for resale. Petitioner has testified that _____, _____, advised it that a resale certificate would be sent, however, the certificate was never issued. Because the purchaser did not issue a resale certificate, an XYZ letter was sent. _____ returned the letter indicating that the tractors were purchased for lease and that the tax was being reported by the lessee, _____. _____ indicates that tax was reported to the Board of Equalization based on the rental receipts.

The Department ascertained that because a resale certificate had not been issued by _____ and because _____ did not make a timely election to report the tax based on the fair rental value of the mobile transportation equipment, the sale to _____ was a taxable sale.

Petitioner contends that no further tax liability exists because _____ and _____ agreed in their lease agreement that _____ would report all tax on the leases directly to the State Board of Equalization. Petitioner contends that to tax the sale to _____ results in double taxation of the same transaction. They further contend that when tax on rental receipts was reported timely by _____, this reporting met the reporting obligations of the lessor, _____.

Analysis and Conclusion

Revenue and Taxation Code Section 6006(g)(4) excludes the lease of mobile transportation equipment from the definition of a sale. The 16 tractors which petitioner sold to [redacted] are "mobile transportation equipment" as defined in Revenue and Taxation Code Section 6023. The evidence clearly indicates that when petitioner sold the tractors to [redacted] petitioner knew that [redacted] was leasing the equipment to [redacted].

In fact, the tractors were delivered directly to [redacted] in California. As a lease of mobile transportation equipment is not a sale, the sale to [redacted] could not be a sale for resale. [redacted] used the tractors when it leased them to [redacted] and consequently the sale to [redacted] is a retail sale. Petitioner, as the retailer, is responsible for the sales tax.

It is noted that [redacted] could have issued a limited purpose resale certificate. Revenue and Taxation Code Section 6092.1 provides:

"Notwithstanding any other provision of law, any person, other than a person exempt from payment of use tax in accordance with Section 6352, who leases mobile transportation equipment and who cannot otherwise properly issue a resale certificate may issue such a certificate for the limited purpose of reporting his use tax liability based on fair rental value as provided in subdivision (d) of Section 6094 and subdivision (d) of Section 6244. With respect to matters arising out of mergers or acquisitions, the provisions of this section shall apply to any matters pending before the board on the effective date of this section."

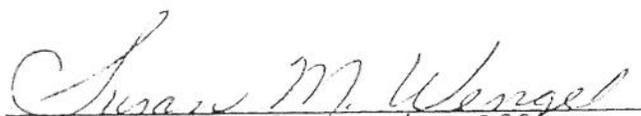
[redacted], however, did not issue such a certificate. There is, therefore, no basis for relieving petitioner of the liability for the tax due on its retail sale of the 16 tractors in question.

It is noted that [redacted] has been reporting tax to the Board that it need not report. [redacted] can request a refund of the money paid based on its rental of the tractors. Certainly, these [redacted] can be used to offset petitioner's liability if [redacted] were to agree to crediting these

amounts to petitioner's liability. Any such transfer of tax money, however, could not be directed by this Board. Under the regulations which control this tax situation, petitioner alone remains responsible for the tax liability.

Recommendation

It is recommended that the tax be redetermined without adjustment.


Susan M. Wengel, Hearing Officer

sim


Date