STATE BOARD OF EQUALIZATION
1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6366

July 7, 1976

Mr. G--- M. L---
T---, M---, J--- & B---
Attorneys at Law
--- --- ---
--- ---, CA XXXXX

Re: SR -- XX XXXXXX
B--- C--- R--- Co.

SR -- XX XXXXXX
I--- E--- Corporation

Dear Mr. L---:

Attached are our decisions and recommendations on the above-named taxpayer's petitions for redetermination of sales and use taxes.

Our recommendations are premised primarily upon a finding that self-propelled transportation over the public highway is an essential functional use of the property.

The length of the transportation appears to vary widely with the size and design of the particular crane. We have considered and rejected as unworkable a varying ruling for self-propelled cranes dependent upon an arbitrary mileage figure.

1. We have recommended that credits be granted to I--- E--- for tax payments collected from leases and reported where a statement is secured from the lessee of the form and content allowed in the B--- C--- R--- audit.

2. When further audit verification is completed, please advise if you desire to have these taxpayer's petitions considered by the board at an oral hearing.

Very truly yours,

W. E. Burkett
Tax Counsel

WEB/vs
Attachments
cc: B--- C--- R--- Co. I--- E--- Corporation

I--- E--- Corporation

SR -- XX XXXXXX 335.0600-1

bc: --- – District Administrator
Attached are two copies of each
of the captioned hearing reports
And the audit work papers.

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

335.0600

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law	)	DECISION AND RECOMMENDATION OF HEARING OFFICER
B--- C--- R--- CO.	)	Account No. SR -- XX-XXXXXX-010
Petitioner	)	

This matter came on regularly for hearing in Oakland, California on June 1, 1976 before W. E. Burkett, Hearing Officer.

Appearances

For the Taxpayer:
Mr. R. W. B---, Manager
Mr. G--- L---, Attorney at Law
Mr. R--- S---, President
C--- E--- D---
A--- of Northern California (CEDA).

For the Board
Mr. L. F. Ferreira, Supervising Auditor
Mr. Robert Stamatis, Field Audit Supervisor
Mr. J. S. Rose, Field Audit Supervisor

Protested Item

(Period 1-1-72 to 6-30-75)

Purchase price of cranes determined to be mobile Transportation equipment.	$538,777

Contentions of Taxpayer

1. The cranes were improperly classified as mobile transportation equipment.

2. An allowance should be made for the taxes paid on the crane rentals.

Summary of Petition

The taxpayer is a domestic corporation engaged in the business of leasing.

The protested measure of tax consists of the purchase price of rubber tire equipped cranes classified as mobile transportation equipment subject to tax measured by the cost price of the property. An adjustment has been allowed for taxes paid on rental receipts collected from customers where a statement and a tax waiver was obtained from the customer (see audit schedule 10A-5-6).

It is the taxpayer's contention that the cranes do not constitute mobile transportation equipment and are, therefore, subject to use tax measured by the leasing charge.

The equipment in question includes the P&H/W 350 and P&H/W 100 center mount cranes. These are large power equipped cranes designed for use in the movement of heavy material at varying heights, chiefly at construction sites. Their base is specially designed for use in rough terrain.

The cranes are self-propelled and capable of movement over the public highway. However, according to the taxpayer's representative, it is not economically feasible to move the cranes by this method for distances in excess of 10 miles. This follows because of their limited speed and operating costs. The cranes are licensed for movement over the public highway but require special trip permits for some moves.

The determination also includes the net purchase price of truck crane models P&H T-300 and P&H T-750. These are large truck base cranes constructed as a single unit.

They are designed with a multiple wheel base. Examination of the photographs of these types of cranes indicate that they would be capable of movement over the highway for substantially greater distances than the rough terrain type cranes. Some minor adjustments are required to provide for movement of the property over the public highway.

The taxpayer's arguments are set forth in a written memorandum prepared by Attorney G--- L--- dated May 21, 1976, a copy of which is attached hereto and incorporated herein by reference.

Analysis and Conclusions

The general issue presented is whether the items in question constitute mobile transportation equipment excluded from classification as leasing sales and therefore, subject to tax measured by the full cost price at the time of purchase or first use (Revenue and Taxation Code section 6006(g)(4)).

Revenue and Taxation Code section 6023 provides the following definition of "mobile transportation equipment":

> "6023. 'Mobile transportation equipment.' 'Mobile transportation equipment' includes equipment such as railroad cars and locomotives, buses, trucks (except 'one-day rental trucks'), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. 'Mobile transportation equipment' does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers or baggage containers designed for hauling by passenger vehicles, or 'one-way rental trucks' as defined and identified pursuant to Section 6024."

The cranes in question do not come within the exclusion for "one-way rental trucks" as defined by Revenue and Taxation Code section 6024. Nor do they constitute a "passenger car" since they are not maintained for the transportation of persons (Vehicle Code section 465).

The provisions of section 6023 are by definition illustrative of the type of property sought to be included. We therefore look to the provisions of Sales and Use Taxes Regulation 1661 (Leases of Mobile Transportation Equipment) promogulated [sic] by the board to implement this section of the law. It provides the following definition of "mobile transportation equipment":

> "(b) LIMITATIONS ON THE TERM 'MOBILE TRANSPORTATION EQUIPMENT' AND DEFINITIONS OF PARTICULAR KINDS.
>
> "(1) The term 'mobile transportation equipment' includes only equipment for use in transporting persons or property for substantial distances. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment."

The term substantial distances is a relative term. Its use here, however, is to be considered in light of the entire definition which further defines the exclusion to include property "commonly used only for loading or unloading, [clearly not applicable]. . .or short distance moving within the confines of a limited area, such as loading dock, warehouse, terminal, bay or airport". (Emphasis added.)

It seems clear that the dominant or primary purpose of the cranes is not transportation. On the other hand, it is equally clear that mobile transportation of the property is a necessary and essential purpose of its design and functional use. A multiple use of transportation equipment has been recognized by the board for a variety of equipment.

The cranes do not move within the confines of a limited area and transportation over the public highway is admittedly one of their uses. A varying exclusion for cranes made dependent on their range is not considered desirable. It follows that the cranes must be classified as mobile transportation equipment within the meaning of the law and regulation. The board's classification is entitled to substantial weight and will not be overturned unless found to be clearly erroneous (see discussion in Culligan Water Co. v. State Board of Equalization, 17 Cal. 3d _____[decided on 6/4/76]).

Recommendation

It is recommended that the taxes be redetermined without adjustment.

_____ 6/24/76
W. E. Burkett Date

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

335.0600

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law	)	DECISION AND RECOMMENDATION OF HEARING OFFICER
I--- E--- CORPORATION	)	Account No. SR -- XX-XXXXXX
Petitioner	)	

This matter came on regularly for hearing in Oakland, California on June 1, 1976 before W. E. Burkett, Hearing Officer.

Appearances

For the Taxpayer:
Mr. R. W. B---, Manager
Mr. G--- L---, Attorney at Law
Mr. R--- S---, President
C--- E--- D---
A--- of Northern California (CEDA).

For the Board
Mr. L. F. Ferreira, Supervising Auditor
Mr. Robert Stamatis, Field Audit Supervisor
Mr. J. S. Rose, Field Audit Supervisor

Protested Item

(Period 1-1-70 to 12-31-73)

Measure of excess tax reimbursement collected in connection with leases of mobile transportation equipment.	$218,311

Contentions of Taxpayer

1. The application of an offset for use tax liability measured by a fair hourly rental charge was improper. The property utilized is not mobile transportation equipment. It is special construction equipment.

2. In any event, credit should have been granted for the taxes voluntarily paid with returns measured by actual rental collected from the lessees.

Summary of Petition

The underlying facts and circumstances for this taxpayer's petition are essentially the same as reported in the companion petition of B--- C--- R--- Company, Account No. SR -- XX XXXXXX, which by agreement of the parties, was held at the same time. The following exceptions are noted:

1. The cranes involved here are R. O. Truck Cranes Models TC-4B, TC 70-2A, TC 120-4D, and TC 120-6D.

Representative photographs of the cranes are available in a brochure provided by the taxpayer's representative.

Our review of the photographs indicates that the crane apparatus is mounted immediately to the rear of the cab of the truck. The chassis upon which the crane is affixed appears to involve less custom design than existed in the companion case. However, we are advised that the truck cranes are purchased as a single unit. The cranes appear to be highly mobile.

2. This taxpayer is an authorized seller and retailer of cranes of the type which are the subject of this petition for redetermination.

The audit staff has concluded that the taxpayer was authorized to measure its use tax liability by a fair hourly rental charge for the cranes (per Regulation 1661(e)(2)). The taxpayer has in fact reported on this basis. However, in each case it collected tax reimbursement from its customer. No credit has been allowed for the taxes collected from the customer and paid over to the state since the amounts were not returned to the customers (per Revenue and Taxation Code section 6054.5).

Analysis and Conclusions

With respect to the contention that the cranes do not constitute mobile transportation equipment, our conclusions are the same as set forth in the aforementioned companion petition which we reproduce in pertinent part as follows:

The general issue presented is whether the items in question constitute mobile transportation equipment excluded from classification as leasing sales and therefore, subject to tax measured by a fair hourly rental charge.

Revenue and Taxation Code section 6023 provides the following definition of "mobile transportation equipment":

> "6023. 'Mobile transportation equipment.' 'Mobile transportation equipment' includes equipment such as railroad cars and locomotives, buses, trucks (except 'one-day rental trucks'), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of such equipment. 'Mobile transportation equipment' does not include passenger vehicles as defined in Section 465 of the Vehicle Code, trailers or baggage containers designed for hauling by passenger vehicles, or 'one-way rental trucks' as defined and identified pursuant to Section 6024."

The cranes in question do not come within the exclusion for "one-way rental trucks" as defined by Revenue and Taxation Code section 6024. Nor do they constitute a "passenger car" since they are not maintained for the transportation of persons (Vehicle Code section 465).

The provisions of section 6023 are by definition illustrative of the type of property sought to be included. We therefore look to the provisions of Sales and Use Taxes Regulation 1661 (Leases of Mobile Transportation Equipment) promogulated [sic] by the board to implement this section of the law. It provides the following definition of "mobile transportation equipment":

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> "(1) The term 'mobile transportation equipment' includes only equipment for use in transporting persons or property for substantial distances. The term does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay or airport. Examples of such items are hand dollies, forklift trucks, mine cars, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment."

The term substantial distances is a relative term. Its use here, however, is to be considered in light of the entire definition which further defines the exclusion to include property "commonly used only for loading or unloading, [clearly not applicable]. . .or short distance moving within the confines of a limited area, such as loading dock, warehouse, terminal, bay or airport". (Emphasis added.)

It seems clear that the dominant or primary purpose of the cranes is not transportation. On the other hand, it is equally clear that mobile transportation of the property is a necessary and essential purpose of its design and functional use. A multiple use of transportation equipment has been recognized by the board for a variety of equipment.

The cranes do not move within the confines of a limited area and transportation over the public highway is admittedly one of their uses. A varying exclusion for cranes made dependent on their range is not considered desirable. It follows that the cranes must be classified as mobile transportation equipment within the meaning of the law and regulation. The board's classification is entitled to substantial weight and will not be overturned unless found to be clearly erroneous (see discussion in Culligan Water Co. v. State Board of Equalization, 17 Cal. 3d _____[decided on 6/4/76]).

We have examined the taxpayer's lease agreement with the customer relative to the contract right to obtain reimbursement form the lessee for the cost and expense of the tax burden. The provisions of the lease are ambigious [sic] and uncertain as to the intent of the parties. However, in view of the parties' contention and the administrative action taken in the companion case, we conclude that the taxpayer should be afforded a credit for tax payments made by each lessee who provides the taxpayer with a statement and tax waiver of the form and content approved in the companion case.

Recommendation

District audit staff to conduct a reaudit and initiate adjustments in accordance with the foregoing conclusions.

_____ 6/24/76

W. E. Burkett Date