

795,0495

12/31/82

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition)
for Redetermination Under the)
Sales and Use Tax Law)

DECISION AND RECOMMENDATION

_____)
_____)

No. _____)

_____)
Petitioner _____)

The above-entitled matter came on regularly for hearing on Wednesday, October 6, 1982, in Sacramento, California before Susan M. Wengel, Hearing Officer.

Appearing for Petitioner: _____

Appearing for the Board: Mr. Jack Warner
Principal Auditor

Protested Item

The petitioner has filed a petition for redetermination of a tax deficiency determination issued on September 21, 1981, for the period July 1, 1977 through June 30, 1980. The protest involves tax determined on the following audit item:

Audit Item D.

Selling price of tangible
fixed assets of _____ Division \$304,644

Contentions of Petitioner

1. The _____ Division was a service business which made no sales; therefore, it was not required to hold a seller's permit.
2. The _____ Division is a business separate from the petitioner.

Summary of Petition

The petitioner is a corporation which is a wholly owned subsidiary of [redacted]. The petitioner manufactures and sells chemicals. They have five locations in California. The [redacted] is a manufacturing plant in the [redacted]. The [redacted] as a district office in [redacted] and a public warehouse in [redacted]. The [redacted] has a warehouse in [redacted] and a warehouse in [redacted]. The petitioner also held the [redacted] which was located in [redacted].

The audit staff found that this division was sold in October of 1978. The [redacted] division was a service business which performed clinical testing. It was sold to [redacted] \$304,644 of the total sales price represented the value of the furniture and equipment sold. Tax was assessed on this amount. The auditor considered the following evidence when ascertaining that the tax was due:

- (1) Because [redacted] Division is a division of [redacted] Corporation at the time of the sale, the unitary business concept should be applied.
- (2) Even though [redacted] was a service division, the other four divisions were making sales and were required to be permitized.
- (3) Because the petitioner held a seller's permit the sale cannot be exempt as an occasional sale.
- (4) The [redacted] Division had three or more sales of assets on a national basis before and after October of 1978. The capital gain and loss statement indicated only the year the asset was sold; however, the number of sales is sufficient to require the division to hold a seller's permit.

The petitioner contends that even though the [redacted] and [redacted] Divisions were engaged in selling activities which required the holding of a seller's permit, the [redacted] Division was a service business and was not required to hold a permit. The petitioner further contends that the sale should be exempt as an occasional sale.

Analysis and Conclusion

A review of the [redacted] organization chart shows that under the Corporate President there is a vice president for each division. The [redacted] manufactures and blends

[REDACTED]

specialty chemical cleaning compounds, coating compounds and floor care products. These products are sold to institutional customers on a nationwide basis through a network of salesmen. The [REDACTED] Division manufactures and sells water and waste treatment chemicals, fossil fuel additives and particle emission control chemicals. Sales are nationwide through the use of specialized salesmen. The [REDACTED] manufactures environmental germicides, detergents and skin cleaners for use in hospitals. These products are also sold nationwide by approximately 300 sales representatives. The [REDACTED] Division provided medical testing services such as blood sampling, tissue testing, toxicology, drug screens and comapanel.

The petitioner contends that the [REDACTED] Division was a service business which carried on business activities separate from the business activities conducted by the other divisions.

The first issue to be determined is whether the [REDACTED] Division made enough sales to be required to hold a seller's permit itself. The audit staff found that the division made the following sales:

(1)	[REDACTED] (Nov. 1977)	\$ 100
(2)	[REDACTED] (D.R.-1971) (Oct. 1977)	\$ 2,783
(3)	[REDACTED] (D.R.-1975) (1977)	\$ 1,425
(4)	[REDACTED] (Jan. 1977)	\$ 3,155
(5)	[REDACTED] (Sept. 1977)	\$ 2,500
(6)	Sale of all P & E (Oct. 1978)	\$ 304,644

Handwritten note: at [REDACTED] offered at \$300,000 that this vehicle (607)

Initially it is noted that the sales of motor vehicles, insofar as the sale of motor vehicles by non-dealers and the occasional sales rules are concerned, are not counted when ascertaining if a sale is occasional when the retail sales of all tangible personal property are being counted. There are, however, three other sales within 12 months of the October 1978 sale of assets.

Sales and Use Tax Regulation 1595(a)(1) provides, in part, that:

"Tax applies to all retail sales of tangible personal property held or used by the seller in the course of an activity or activities for which a seller's permit or permits is required or would be required if the activity or activities were conducted in this state.

"Generally, a person who makes three or more sales for substantial amounts in a period of 12 months is required to hold a seller's permit..."

It is concluded that [redacted] was engaged in the business of selling assets and that the sales were sufficient in number and character to constitute an activity for which a seller's permit would have been required.

It is further noted that even if the [redacted] Division had not made enough sales to require them to hold a seller's permit, it is part of the petitioner corporation and cannot be considered to be a separate business. The sales of the entire corporation would be considered, and because the petitioner held a seller's permit, the sale of their furniture and equipment would be subject to tax. (Regulation 1595(a)(1).) The petitioner files one tax return, has one Board of Directors that sets limits on the types of decisions which may be made by the lower level management, and has one legal staff which does work on an hourly basis for all the divisions. Furthermore, the headquarters for the [redacted] Division and for the petitioner are located within two blocks of each other. (Regulation 1595(3)(C)&(D).) The division is owned by the petitioner and the ultimate management is by the petitioner's president and the members of their board. Although each division has their own accounting staff, the yearly accounts are done by the headquarters' accountants. Finally, the petitioner has a definite corporate structure of which the [redacted] Division is a part.

In sum, it is concluded that the [redacted] Division is a unitary business with the petitioner, and even if it were not a unitary business, it had enough sales itself to require the holding of a seller's permit. No adjustment can be recommended.

Recommendation

It is recommended that the tax be redetermined without adjustment.

Susan M. Wenger
Susan M. Wenger, Hearing Officer
2/17/83

Dec. 31 1982
Date

Reviewed for Audit:

J. M. [redacted]
Principal Tax Auditor

January 3, 1983
Date