

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

415.0085

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

DECISION AND RECOMMENDATION
OF HEARING OFFICER

Petitioner

Account No. X-----

This matter came on regularly for hearing on Wednesday, December 4, 1974, at San Bernardino, California.

There were no appearances for the taxpayer (see letter of November 13, 1974, in file). Mr. Lively appeared for the board.

Protested Item
(Period 4/1/73 to 5/31/73)

Taxable sales understated.

\$7,811

Contentions of the Taxpayer

The school was not a principal in the selling activity carried on by X-----.

Summary of Petition

The petitioner, X-----, Managing Director, has entered this petition for redetermination of a dual determination issued against one X-----, an individual who operated a service station leased by the school.

The dual determination was issued against the school as a joint adventurer in X----- selling operation in view of the following information (per office discussion summary):

“1. The X----- hereinafter referred to as X----- had a lease on a service station which was not being operated for which monthly rental payments had to be made.

“2. X----- was desirous of operating the station but had no money with which to stock inventory.

“3. X----- entered into an agreement with X----- to operate the station as follows:

“a) X----- would purchase and pay for all the gasoline in their name and have it delivered to the station.

“b) Any other merchandise stocked or sold would be purchased and paid for by X-----.

“c) The lease was retained in the name of X-----, rent would continue to be paid by X-----

“d) X----- would operate the station and pay to X----- the cost of the gasoline plus \$100 per month rent or 3¢ per gallon of gasoline sold whichever was greater.

X----- secured a seller’s permit and operated the station from April 1, 1973 to May 31, 1973. No returns were filed.”

The taxpayer, through its representative X-----, Managing Director, has generally denied the existence of a joint adventure.

A preliminary hearing was scheduled to consider the petition on June 19, 1974, but the scheduled hearing was postponed in view of the health of the petitioner. A second preliminary hearing was scheduled to consider the petition on December 4, 1974. By his attorney, taxpayer’s managing director advised that he would be unable to appear for hearing on the scheduled date. The communication included an offer to settle the protested tax deficiency at 50 percent of the amount claimed to be due.

The tax deficiency is measured by estimated gasoline sales. No issue is presented with respect to the amount of the tax deficiency.

Analysis and Conclusions

The information assembled by the field staff indicates that the school purchased the gasoline for its own account and caused it to be delivered to X----- . It was to receive reimbursement for the cost of the gasoline and \$100 per month, or \$.03 per gallon of gasoline, whichever amount was greater. In view of this, we conclude that the school was properly classified as a joint adventurer and retailer of the property. A joint venture existed by reason of a community interest in the venture, and a sharing of profits and losses (see 28 Cal. Jur. 2d, Joint Adventurers, §3).

A representative of the staff of the board is not authorized to enter into an agreement to compromise a claimed tax liability.

Recommendation

It is recommended that the tax be redetermined without adjustment.

W. E. Burkett, Hearing Officer

1-20-75