STATE OF CALIFORNIA

495.0375

BOARD OF EQUALIZATION

In the Matter of the Petition for Redetermination of State and Local Sales Tax; X---------- Petitioner	DECISION AND RECOMMENDATION

No hearing was held on the above-entitled matter. However, pursuant to a telephone conversation with counsel for petitioner and a settlement agreement between petitioner and the California Franchise Tax Board a recommendation is made at this time. Robert H. Anderson, Hearing Officer.

Representing Petitioner: X----------

Protested Item: A Field Billing Order was prepared on April 26, 1976 pursuant to information obtained from the Riverside County Sheriff's Department and the Franchise Tax Board. Petitioner was assessed sales tax on the sales of narcotics for the period from 9-1-75 to 3-11-76. A determination for tax measured at $350,014 and a penalty for failure to file returns was issued on April 30, 1976.

Contentions: Petitioner contends that no sales or use tax is due, but gives no reason why. In addition, petitioner states he was unaware of the manner and computation utilized by the Board of Equalization in arriving at the determination.

Summary: Petitioner was arrested and charged with making illegal sales of narcotics after having made a sale to undercover agents. He pleaded guilty to having made the sale to the agents and was sentenced. This assessment is based on making sales of narcotics and the measure of the tax was originally an amount estimated by the California Franchise Tax Board to be his income for State income tax purposes as no records were available.

Ultimately the Franchise Tax Board representatives met with petitioner's counsel and reached a compromise agreement with respect to Mr. Parker’s income for State income tax purposes. His income for the calendar year 1975 was set at $47,000 and for 1970 from January 1 through March 11 was $30,000.

Conclusions: The sale of narcotics is a sale of tangible personal property and there is no statutory exemption for such sales unless, of course, they are legally made pursuant to a prescription by a licensed physician or surgeon. The fact that such sales are in violation

of penal code provisions and federal laws makes no difference where it comes to liability under the Sales and Use Tax Law. Accordingly, the sales are taxable.

Inasmuch as the Board of Equalization's source of figures for sales tax purposes comes from the California Franchise Board's figures, the measure of the tax should be based on their figures too; and should be consistent with the compromised figures.

The determination covers the period from September 1, 1975 through March 11, 1970. Thus, in 1975 there is an assessment for sales over a four month period and in 1976 an assessment for sales over two months and 11 days. Prorating the 1975 taxable income for Franchise Tax purposes produces a measure of $15,666.66 for 1975. The 1975 taxable income for Franchise Tax purposes is $30,000.

Accordingly, the measure of tax should be adjusted to reflect the Franchise Tax Board's figures.

Recommendation

Redetermine. Adjust the measure of tax to $45,666.66, and add the penalty for failure to file returns.

Adjustment to be made by Petition Unit.

Robert H. Anderson, Hearing Officer June 21, 1977