

600.0016
4/4/77

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition for)
Redetermination and Claim for)
Refund of State and Local Sales)
Tax,)

DECISION AND RECOMMENDATION

Petitioner-Claimant.

The above-entitled matter came on regularly for hearing on Wednesday, March 16, 1977 in San Francisco, California. Robert H. Anderson, Hearing Officer.

Appearing for Petitioner: _____

Appearing for the Board: Mr. Norman E. Lessard
Field Audit Supervisor
San Mateo Sub-district

Protest

Petitioner-Claimant protests the assessment for sales tax in the amount of \$3,120.42 for purchases of Container Spreaders used to load and unload cargo containers in shipping operations. In addition, petitioner protests the assessment of a penalty in the amount of \$312.04 for failure to file returns.

A determination was issued for the above amounts plus interest on November 22, 1976 for the period from 1-1-71 through 6-30-76. Payment of tax, interest and penalty in the amount of \$4,065.50 was made on December 17, 1976 and a claim for refund was made with said payment.

Contentions

The container spreaders became component parts of the vessels in the course of altering and improving the vessels for the handling of cargo containers.

Three of the container spreaders, sold to a common carrier, are exempt from the sales tax under section 6385 of the Rev. & Tax. Code.

Three of the container spreaders are exempt interstate shipments under section 6396.

The provisions of the Constitutions of the State of California and of the United States assuring equal protection of the law and prohibiting the taxation of interstate commerce require a redetermination and

refund of the tax. The petitioner-claimant seeks relief of penalty on grounds set forth in a statement made pursuant to section 6592 of the Rev. & Tax. Code.

Summary

[redacted] purchased six spreaders from [redacted] for use in its waterborne cargo transportations. The vendor was issued a watercraft exemption certificate and therefore charged no sales tax on the transaction. Sales tax has been assessed pursuant to the provisions of section 6421 of the Rev. & Tax. Code.

Three of the spreaders were transported by [redacted] to Hong Kong where they were delivered to three other vessels in the [redacted]. As to the three that were transported to Hong Kong petitioner claims the exemption under section 6385 and/or 6396 in addition to the watercraft exemption under section 6368.

The three spreaders that did not go to Hong Kong were placed on three other vessels of the [redacted] when they were at United States ports. Photographs of the [redacted] spreaders are in the workpapers at schedule 2c, pages 2 and 3.

Conclusions

The primary issue in this matter is whether the spreaders meet the test for the watercraft exemption; if they do, then the other issues raised by petitioner need not be considered.

The basic test for the watercraft exemption, as far as various component parts of a vessel are concerned, requires that they be affixed or attached to the watercraft (or affixed to an already affixed part thereof) in a substantial manner when in use. Substantial is not defined and appears to vary considerably as far as the attachment is concerned.

For example, operational flags and pennants are deemed to be components of a watercraft and eligible for the watercraft exemption. The simple way in which such flags are affixed to lines, moved by pulleys, attached to small masts, etc. points up the fact that the type of attachment necessary to qualify equipment for the watercraft exemption varies. It would appear that the attachment does not have to remain attached when not in use. So long as it must be attached in some way, and cannot be used when free standing. The test appears to have been met.

It might be argued that a lifeboat is not affixed to the ship at all when it is in use as a lifeboat, or at least it better not be. It is affixed when not in use, and the attachment is such that it can only be easily and rapidly released after being lowered into the water. Actually, most lifeboats are affixed when initially [redacted] to the water

The spreaders under consideration in this petition are affixed or attached to the cargo handling machinery and equipment when in use. They are attached when not in use, but in a different way. When not in use they are stowed or lashed to the deck so that they will not shift when the ship is underway in rough seas. The container spreaders stay with the ship since they are needed for unloading operations too, and many foreign ports do not have shoreside cranes with related container handling equipment such as spreaders.

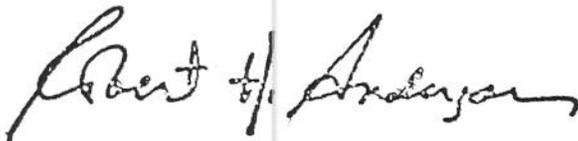
Spreaders are a component and integral part of the cargo handling equipment; they are not a component of the cargo containers. When in use they are affixed to and become a part of the cargo handling equipment; they cannot be used in a free standing condition. In other words, they can only be used in conjunction with the cargo handling machinery and equipment and must be attached to it when functionally used.

The machinery and equipment is permanently affixed to the ship and is a component of it. It follows that when the spreader is affixed to the machinery and equipment it is likewise a component part of the ship.

In summary, since the cargo handling equipment is a component of the watercraft, so is the spreader when attached to that equipment, and the watercraft exemption test is met for spreaders that are used in conjunction with the ships cargo handling equipment. The test is not met if the spreaders are used in conjunction with shoreside cargo handling equipment.

Recommendation

Redetermine. Claim for refund be granted.



Robert H. Anderson, Hearing Officer

APR 4 1977

Date

Reviewed for Audit:

Principal Tax Auditor

Date