

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
ROBERT CHANG SOUNG, dba) Account Number: SR GH 100-464912
Robert Soung's Vending) Case ID 462258
Petitioner) Lompoc, Santa Barbara County

Type of Business: Vending machine operator

Liability period: 07/01/06 – 04/16/07

<u>Item</u>	<u>Disputed Amount</u>
Unreported sale	\$50,500
Tax determined and protested	\$4,029.00
Interest through 11/30/11	<u>1,452.94</u>
Total tax and interest	\$5,481.94
Payments	<u>- 2.52</u>
Balance Due	<u>\$5,479.42</u>
Monthly interest beginning 12/1/11	<u>\$ 20.13</u>

This matter was scheduled for Board hearing on March 25, 2011, but petitioner did not respond to the Notice of Hearing and it was presented to the Board for decision without oral hearing. The Board concluded that petitioner's sale of vending machines was subject to tax. Petitioner subsequently filed a timely petition for rehearing which we recommended be granted, giving petitioner the benefit of doubt that his own personal situation resulted in relatively extreme circumstances for him. The Board accepted our recommendation and granted the request for rehearing.

UNRESOLVED ISSUE

Issue: Whether petitioner's final sale of 14 vending machines was subject to sales tax. We find that it was.

Petitioner was engaged in business as a vending machine operator from September 2004 through April 2007. Although petitioner's reported taxable vending machine sales were unusually low, the Sales and Use Tax Department (Department) did not conduct an audit to verify those sales.

1 Pursuant to a “Buyer and Seller’s Agreement” signed on April 16, 2007, petitioner sold 14 vending
2 machines for \$50,500, but did not remit sales tax with respect to that sale. The Department concluded
3 that petitioner’s final sale of vending machines was subject to sales tax.

4 Petitioner states that he was not aware he would owe sales tax on the sale, and claims that the
5 transaction is similar to the sale of a used vehicle, so the purchaser should be liable for the tax.

6 Petitioner also asserts that he should not owe sales tax on the sale of vending machines because he paid
7 sales tax (reimbursement) when he purchased them, and he also paid property tax on the machines and
8 sold them at a loss.¹ Moreover, petitioner notes that the Board refunded his security deposit, which he
9 believes would not have been done if he owed tax on the final sale of vending machines. Petitioner
10 also claims that each vending machine was fully stocked with merchandise when the machines were
11 sold. Further, petitioner asserts that he is unable to pay the determined tax.

12 Petitioner does not dispute that he used the vending machines at issue in the course of activities
13 for which a seller’s permit was required. Consequently, the final sale of vending machines was subject
14 to sales tax. (Cal. Code Regs., tit. 18, § 1595, subd. (a)(1).) The only contention raised by petitioner
15 that might impact the measure of tax is his assertion that the machines were stocked with goods when
16 sold. If so and if the purchaser of the vending machines resold the contents, then the sale of the
17 inventory would have been nontaxable as a sale for resale. However, the Agreement does not indicate
18 that the vending machines were stocked and does not separately show any amounts paid for inventory,
19 nor has petitioner provided any evidence that the sale of machines included the sale of merchandise for
20 resale. All of petitioner’s other arguments are misplaced.

21 Since the Agreement establishes a sale price of \$50,500 for the equipment, that is the amount
22 subject to tax. Although petitioner has claimed that the buyers paid only \$49,500 of the \$50,500, he
23 has provided no evidence that the buyers failed to pay the last \$1,000 or that he has charged off that
24 amount as an uncollectible bad debt for income tax purposes. While we sympathize with petitioner’s
25 financial situation, that does not affect whether the tax is due or not. We note, however, that the D&R

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27 ¹ The fact that petitioner may have sold the vending machines for a price less than he paid is not equivalent to selling the
28 machines as a loss since his use of the machines diminished their value. In any event, this is irrelevant to his liability for
sales tax, except that the measure of that tax is his gross receipts, and not the actual value of the machines.

1 did indicate that the Board has provisions for settlement, installment payment plans, and offers in
2 compromise.

3 **OTHER DEVELOPMENTS**

4 None.

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6 Summary prepared by Pete Lee, Business Taxes Specialist II
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