

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
THOMAS INTERNATIONAL HOME FURNISHINGS) Account Number: SR Y AS 99-738940
Petitioner) Case ID 425486
Torrance, Los Angeles County

Type of Business: Furniture sales
Audit period: 10/01/03 – 09/30/06

| <u>Item</u> | <u>Disputed Amount</u> |
|---|------------------------|
| Disallowed claimed transportation charges | \$426,156 |
| Tax as determined: | \$81,265.32 |
| Adjustment - Sales and Use Tax Department | -37,582.78 |
| - Appeals Division | <u>- 7,945.60</u> |
| Proposed redetermination | \$35,736.94 |
| Less concurred | <u>- 578.99</u> |
| Balance, protested | <u>\$35,157.95</u> |
| Proposed tax redetermination | \$35,736.94 |
| Interest through 6/30/10 | <u>16,545.84</u> |
| Total tax and interest | \$52,282.78 |
| Payments | <u>- 971.90</u> |
| Balance Due | <u>\$51,310.88</u> |
| Monthly interest beginning 7/1/10 | <u>\$ 202.80</u> |

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the audited amount of disallowed claimed nontaxable transportation charges. We recommend no adjustment.

Petitioner operates two locations selling home furnishings. Petitioner claimed deductions for sales tax included and for sales for resale. The deduction for sales for resale included nontaxable sales for resale, exempt sales in interstate commerce, and transportation charges. The Sales and Use Tax Department (Department) found that some of the transportation charges were taxable because petitioner was making deliveries in its own truck. In the audit, the Department conducted a test of the second quarter 2006 (2Q06), which it expanded in the second reaudit to include the second quarters of 2004 and 2005, using documentation petitioner provided after the appeals conference. In the second

1 reaudit, the Department computed a percentage of disallowed claimed transportation charges to
2 reported taxable measure of 2.76 percent, which it applied to reported taxable measure to establish the
3 disallowed claimed transportation charges at issue. Petitioner contends that sales tax is not due on
4 transportation charges for deliveries made in its own truck. Petitioner has not provided specific
5 statutory or regulatory authority for its argument.

6 If delivery is by the facilities of the retailer, the transportation charges are excluded from
7 taxable gross receipts only if three requirements are met: 1) the transportation charges are separately
8 stated; 2) the charges are for transportation from the retailer's place of business or other point from
9 which shipment is made directly to the purchaser; and 3) the transportation occurs after the sale of the
10 property is made to the purchaser. (Rev. & Tax. Code, § 6012, subd. (c)(7).) There is no dispute that
11 the first two conditions were satisfied. Thus, the issue is whether petitioner's delivery occurred after
12 the sale.

13 Title to property passes, and the sale occurs, when the retailer completes its duties with
14 reference to physical delivery of the property, unless the contract of sale includes a provision passing
15 title to the property to the purchaser prior to that time. (Cal. Code Regs., tit. 18, § 1628, subd.
16 (b)(3)(D).) Since petitioner delivered the property in its own facilities, it did not complete its duties
17 with reference to physical delivery of the property until it completed delivery. Thus, title passed and
18 the sale occurred at that time (after delivery) unless the contract of sale included a provision passing
19 title to the goods prior to delivery. However, petitioner has provided no evidence (either contracts or
20 statements on its invoices) showing that such was the case. Accordingly, we find that the
21 transportation charges were taxable, and that there is no basis for adjustment..

22 **Issue 2:** Whether petitioner has established that its failure to report tax on its transportation
23 charges was due to its reasonable reliance on advice provided by the Board. We find that it has not.

24 The Department conducted an audit of petitioner's business for the period July 1, 1996, through
25 December 31, 1998, which resulted in no change to reported amounts. The Department initiated an
26 audit of the period April 1, 1999, through December 31, 2001, but that audit was waived after a brief
27 preliminary review of the records. Petitioner states that, during those previous reviews of its records, it
28 was not notified that the transportation charges for delivery in its own trucks were subject to tax.

1 Petitioner contends that the prior audits represent advice from the Board on which it reasonably relied
2 to not report tax on charges for delivery in its own trucks. Also, petitioner asserts that other furniture
3 stores do not charge sales tax reimbursement on delivery charges.

4 We first note that petitioner has not submitted a statement signed under penalty of perjury
5 setting forth the facts on which it bases its claim for relief, as required by Revenue and Taxation Code
6 section 6596. In any event, our review of the record indicates that relief is not warranted. Section
7 6596 provides for relief if a taxpayer has relied on *incorrect written advice* from the Board. There is
8 no authority to grant relief under section 6596 based on the Board's failure to provide specific advice.
9 For relief to be available based on reasonable reliance on prior audit advice, the issue in question must
10 have been examined in the prior audit. (Cal. Code Regs., tit. 18, § 1705, subd. (c).) We have reviewed
11 the audit report for the period July 1, 1996, through December 31, 1998, and note that the Department
12 did not identify any deductions claimed for transportation charges during that period. Nor have we
13 found any evidence that the Department reviewed the issue of transportation charges in its brief
14 preliminary review of the period April 1, 1999, through December 31, 2001, for which it waived the
15 audit. Since the issue of transportation charges was not examined in the first audit or in the brief
16 review of the records of the second audit period before that audit was waived, we find that relief is not
17 available based on the claimed reasonable reliance on prior audit advice.

18 We note that petitioner's assertion that other furniture retailers do not add sales tax
19 reimbursement to their transportation charges is irrelevant. The only issues here are whether the
20 charges are in fact taxable and, if so, whether there is a basis for relief under section 6596. For the
21 reasons discussed above, we find that the charges are taxable, and that there is no basis for relief.
22 Furthermore, we note that whether a retailer collects tax reimbursement or not does not affect its tax
23 liability (though tax reimbursement collected for a sales that is not taxable must be returned to the
24 customer or remitted to the state). We note further that not all transportation charges are taxable, as
25 noted above. The furniture stores on whose tax reimbursement practices petitioner seeks to rely might
26 not be collecting tax reimbursement on delivery charges because those charges are not taxable. For
27 example, if the other requirements for exclusion were satisfied, the delivery might be by common
28 carrier, or those furniture stores may sell the property prior to the delivery. Finally, we note that, if the

1 other furniture stores are not reporting and paying the tax due on delivery charges, then upon audit, the
2 Department will likely discover the error and assess those other stores the tax they owe.

3 We find relief from the tax due is not warranted.

4 **OTHER DEVELOPMENTS**

5 None.

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7 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
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