PRELIMINARY HEARING REPORT

2176.690

Report of Hearing Officer Lawrence A. Augusta/lt

Taxpayer B

California

Account Number

Form Number 1210

Date of Billing 11/12/70

Period (From 10/1/67
(To 12/31/69

Date of Hearing

Time 10:00 A.M.

Place Sacramento

Appeared on behalf of Petitioner

Mr. and Mrs.

Mr. and Mrs.

Board of Equalization Representatives Messrs. Whitney and Cook

Comments and Recommendations

PROTESTED ITEMS:

	.07 Rate	.08 Rate
B. Off Highway Use overstated	$411	$165

CONTENTIONS OF PETITIONER:

That he is not liable for taxes on portions of logging hauls over United States Forest Service roads as he is contributing to maintenance of roads.

REPORT ON FACTS:

Petitioner, , and his brother, petitioner are engaged in the business of hauling rough timber from the site of cutting to the lumber mill. They own their own truck tractors and trailers and contract with the logging company to haul the logs on the basis of a flat rate per thousand board feet of lumber.

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In the typical logging situation, a lumber company owning a mill, in this case, , will buy cutting rights to a certain stand of timber, usually from the federal government. The cutting rights area is known as a "sale". The lumber company will contract with a logging company, in this case , to fall, buck, skid, load, and haul the timber. All of these colorful terms refer to steps in the process of getting a standing tree to the lumber mill.

In the event that the logging company has no trucks or does not have sufficient trucks to fulfill the hauling portion of the contract, they will subcontract with persons such as the to do the hauling. Such subcontractors are known as "gypos" in the logging industry.

Most of the sales are in remote areas, not accessible by any existing roads. Consequently, part of the contract between the lumber company ( ) and the United States Forest Service, an agency of the United States Department of Agriculture, provides for the construction and maintenance of roads leading to the sale. Of course, a hauler may utilize these new roads, roads constructed for previous operations, county roads, state highways, and United States highways in getting the logs to the mill. Typically, the loggers contribute to the maintenance of pre-existing roads, known as "forest service" roads. Other roads, constructed and maintained by the loggers and closed to the public during logging hours, are known as "special service" roads. Portions of the haul on special service roads were excluded from the measure of tax by the auditor, and only the portion of the haul over forest service roads are at issue.

Petitioner stated that the rate per thousand feet is determined by oral negotiation between the gypo and the logging company. The gypo will ride over the route of the haul to determine his estimate of a reasonable price. The grade up which the haul must be made, the distance of the haul, and the kind of timber are all factors in arriving at this estimate. Different kinds of timber are of different density, and the weight per thousand feet varies accordingly.

According to , after the gypo arrives at his estimate of a fair price, he submits the bid to the logger. Currently, there is an excessive supply of gypos in relation to the demand, and some logging companies may not accept the gypo's offer but will set rates themselves and offer the job to the gypo on a take it or leave it basis. However, in the normal price bargaining situation, stated, there has always been an oral understanding that a gypo must accept a reduction in the rate per thousand baard feet so that the gypo will share in the cost of maintenance of the road. Traditionally, there has not been a written contract between the logger and the gypo as to the hauling rate, and the amount of the reduction for road maintenance has not been separately stated. In the case in question, in making hauls

from the , and sales, the price was $10 per thousand board feet, and this was 50¢ less than the haul was worth.

stated that he is now asking all contractors to separately state the amount of the contribution.

The presented a statement signed by bookkeeper for the , to the effect they contributed 5 percent of the upkeep of the roads in question. This statement was secured from the bookkeeper after the auditor had explained the requirements for the exemption.

The stated that it was their impression that the issue to be resolved by the hearing was whether they were hauling over a forest service road or over a county road, and not whether they were contributing to the maintenance of the road. There is no question that the logging company contributed to the maintenance of the road through their agreement with

The auditor disallowed the claimed exemption on the grounds there were no records to indicate that the had in fact contributed to the maintenance of the road. The auditor rejected the statement from the bookkeeper for the logger on the grounds it was self-serving and made after the fact.

Further investigation by the hearing officer indicates that custom and usage of practice in the logging industry is as described it in regard to payment to gypos and their participation in the maintenance of the roads.

agreed that he was liable for tax on his hauls for the in Six Rivers National Forest, as the haul in question was over county roads.

There was some discussion of the actual length of the hauls as computed by the auditor. The auditor's computations seemed reasonable.

The periods in question are October 1, 1967 to December 31, 1969 for use fuel tax and July 1, 1967 to December 31, 1969 for motor vehicle transportation license tax. The statutory amendments providing for exemption from these taxes for operations on forest service roads for which the operator contributes to the cost of maintenance was effective November 8, 1967. Ruling 1408 and the amendments to Ruling 1316 relating to record keeping to claim these exemption were effective June 7, 1969 and published in pamphlet form in September 1969.

Research into the Board's files revealed a series of discussions with industry representatives in 1969 concerning this practice, and the proper treatment of gypos who contribute to maintenance in this manner. The outcome was the records requirements of Ruling 1408 and Ruling 1316, both effective June 7, 1969.

CONCLUSIONS:

Petitioner contributed to the maintenance of the roads in question by accepting a reduced per unit rate for hauling in accordance with the accepted and established practices in the industry.

As Rulings 1408 and 1316 were incorporated into a pamphlet dated September 1969, it is doubtful that petitioner could have received notice of the requirements before October 1969, shortly before the close of the period in question. There would have been uncertainty as to record requirements at that time, let alone before. As no specific record requirements were established prior to June 1969, petitioner cannot be held to such requirements. Between June 1969 and September 1969, the requirements were not published, and petitioner cannot be held to knowledge of them. After publication, a three-month period is not unreasonable to allow implementation.

I conclude that taxpayer has met the requirements of sections 9606.1 and 8653.1.

RECOMMENDATIONS:

That the protested items be deleted from the measure of tax and the determination otherwise be redetermined without adjustment.

Adjustment to be made by petition unit.

Lawrence A. Augusta, Hearing Officer

REVIEWED:

Highway Taxes Administrator

Date