



which includes documentation submitted by taxpayer's attorney, consists of a sales agreement containing the name of [redacted] Palo Alto, dated 1/18/71, showing the selling price of \$22,201, with a notation written on the face thereof which provides: "Customer offered \$20,000 including tax". In a letter dated August 15, 1974, from the taxpayer under the signature of [redacted] and [redacted], it is stated that the notation quoted above constituted a counter offer of \$20,000.

The second piece of documentation is on a form identical to the one used on 1/18/71, is made out to [redacted] Portland, Oregon, and shows the date of 1/28/71, with a selling price of \$20,000 with the added notation of "delivery outside of state". In the taxpayer's letter of August 15, 1974, it is stated that the latter document actually governed the transaction.

The third document is a certification dated 3/6/71, signed by [redacted], stating that his address is [redacted] Portland, Oregon, and that he received and took delivery of [redacted] out of the State of California. Following [redacted] signature is a certification apparently signed by the salesman (signature illegible) which provides "I hereby certify that I delivered [redacted] to [redacted] out of the State of California". According to the taxpayer's letter of August 9, 1973, the language on the two certifications mentioned above was prepared under the direction of Mr. Edward Fakoury, a Board of Equalization auditor from Oakland.

The fourth document is a letter dated August 21, 1972, from the taxpayer to [redacted] Palo Alto, California, with a copy of the envelope postmarked August 21, 1972, Oakland, California, addressed to [redacted] at the above-mentioned address with the following postal notation checked thereon "moved, left no address".

The fifth document is a letter dated April 27, 1973, from the taxpayer addressed to [redacted] Palo Alto, with two enclosures (a letter to the taxpayer from the board dated April 25, 1973, and a bill from the taxpayer to [redacted] for \$1,000 sales tax). A copy of the face of an envelope is attached, postmarked April 27, 1973, from Oakland, California, which contains the postal notation "moved, not forwardable", and also the notation "return to writer". The face of the envelope also has a notation apparently placed there by the taxpayer "received April 30, 1973, [redacted]".

This completes the documentation connected with the [redacted] transaction.

2. The [redacted] transaction involves the sale of a boat to a "California resident" with delivery being effected in the same manner as delivery to [redacted] was effected. In other words, the salesman delivered the boat to the purchaser at sea. The documents surrounding the [redacted] transaction consist of a certification of out-of-state delivery dated 1/31/71, similar in form to the one signed by [redacted] dated 3/6/71, except that it identifies the boat as [redacted] and gives his address as [redacted] Portland, Oregon, and certification of delivery is signed by another salesman whose signature is also not very legible.

The second document consists of a letter dated May 18, 1973, to [redacted] Oakland, California from [redacted]

[redacted] San Francisco, California, RE: [redacted] The letter recites a number of addresses for [redacted] and also states that there are no vehicles or boats registered in this "area" (a DMV geographical division of the state which includes San Francisco, Oakland, Vallejo, Walnut Creek, Concord, Stockton, etc.) to either Mr. or Mrs [redacted]

The third document is a statement issued by the U. S. District Court of New Jersey, dated December 21, 1973, which provides in part: "The following have been adjudged bankrupt upon petitions filed as follows, to wit: [redacted] December 13, 1973." (The December 13 date referred to the date the petition was filed.)

The fourth document is a promissory note in the amount of \$3,014 showing the year 1971 without any other dates legible, signed by [redacted] and payable to [redacted]

In a letter dated August 15, 1974, previously referred to in the hearing report, there is a recitation of the known addresses of Mr. [redacted] as follows:

- [redacted] Portland, Ore. 97200
- [redacted] Fairfield, Calif. 94505
- [redacted] San Mateo, Calif. 94400
- [redacted] San Mateo, Calif. 94400
- [redacted] Walnut Creek, Calif.
- [redacted] Glenside, Pa., 19038
- [redacted] Beach Haven, N. J."

The fifth document is a bill of sale dated 7/7/71, from the U. S. of America, Department of Transportation, U. S. Coast Guard, showing [redacted] Portland, Oregon, as the owner on a certificate of enrollment for yacht license for the boat in question.

3. On the [redacted] transaction the question involved is whether or not an instate delivery occurred. The documentation which has been reviewed regarding this transaction consists of:

1. A letter dated 3/26/71 to [redacted] from [redacted] which provides in relevant part:

"I understand my boat will be ready for delivery at Newport Beach, California 4/10/71, as we discussed on the phone, and there will be no California tax because of my Oregon address. I intend to sail the boat up the coast April 16. If you care to join me for part of the trip, please let me know".

2. A memorandum dated 1/31/71 in the taxpayer's file provides:

[redacted] Portland, Oregon - [redacted] delivered in Newport Beach --- [redacted] boat to be a demo boat --- he is to be paid \$100 a day when he skips a demo party."

3. A letter dated April 29, 1971, to [redacted] Portland, Oregon, provides:

"Statement

"For delivery of [redacted] from Newport Beach, California to Portland, Oregon. April 10 through April 29 - \$1,094 at \$1 per mile (includes fuel and provisions) total amounts to \$1,094 [partially illegible] per statements due upon receipt:

Signed: [redacted]

A "paid" stamp is imposed over the last two paragraphs which accounts for the partial illegibility of the amount due.

Analysis and Conclusions

Under paragraph (a)(1) of Regulation 1620, Interstate and Foreign Commerce, if title to the property passes to the purchaser at a point outside this state, or if for any other reason the sale occurs outside this state, the sales tax does not apply, regardless of the extent of the retailer's participation in California in relation to the transaction.

The documented facts in the [redacted] and [redacted] transactions indicate that the sales occurred outside this state. Therefore, the sales tax does not apply.

Section 6247 of the Sales and Use Tax Law provides:

"6247. Presumption of use -- out-of-state delivery. On and after the effective date of this section, it shall be further presumed that tangible personal property delivered outside this State to a purchaser known by the retailer to be a resident of this State was purchased from a retailer for storage, use or other consumption in this State and stored, used or otherwise consumed in this State.

"This presumption may be controverted by a statement in writing, signed by the purchaser or his authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside this State. This presumption may also be controverted by other evidence satisfactory to the board that the property was not purchased for storage, use, or other consumption in this State."

The issue on these two transactions is whether this presumption has been controverted.

In [redacted] we have documentation signed by [redacted] that his address was out of state and further documentation that letters sent to his former California address were returned to the taxpayer.

As to the [redacted] transaction the hearing officer finds that the presumption in section 6247 does not apply because [redacted] had moved out of state. Also, even if the presumption applied, the documented evidence has overcome the presumption. Accordingly, this item should be deleted from the measure of tax.

In the [redacted] transaction it is quite possible that [redacted] had double residency. In this case, the presumption in section 6247 would apply. (See Garrett Corp. v. State Board of Equalization, 169 Cal.App.2d 504, re: double residency.) However, in the hearing

officer's opinion the evidence adduced does not establish when the boat was returned to California. The documented facts are that the boat was not located in the Bay Area just prior to 5/18/73, and was in fact enrolled with the Coast Guard in Portland, Oregon.

The hearing officer finds that the evidence overcomes the presumption that purchase was for use in California. Accordingly, this item should be deleted from the determination.

The [redacted] transaction involves a sale to a known California resident with a documented out-of-state delivery by a factory representative. Under these facts the sales tax would not apply. As to the presumption under section 6247, the liability turns on whether the statement in [redacted] letter to the taxpayer, dated 3/26/71, is sufficient to relieve the taxpayer of liability. Concededly it does not declare that the property was purchased for use at a designated point outside California. However, if we couple the statement made by [redacted] with the fact of delivery into Oregon by the factory representative, the hearing officer believes that this constitutes "other evidence" mentioned in the last sentence of section 6247 and overcomes the presumption. Accordingly, this item should also be deleted from the determination.

The hearing officer does not believe the Brock case (32 Cal. App.2d 550) is controlling under the facts ultimately established because we do not have the admission of immediate return to California following delivery at sea, as assumed in Mr. Jugum's memorandum of 3/20/73 to Oakland Auditing.

Since the taxpayer in a letter dated August 9, 1973 to the State Board of Equalization states that all three of the boats in question returned to California, the three purchasers should be billed for use tax.

Recommendation

Delete sales of boats to [redacted] from measure of tax.

Jack D. Paulson  
Jack D. Paulson, Hearing Officer

Reviewed for Audit:

10/31/74  
Date

\_\_\_\_\_  
Principal Tax Auditor

\_\_\_\_\_  
Date