

335,0062,200

4/30/75

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

In the Matter of the Petition
for Redetermination Under the
Sales and Use Tax Law

DECISION AND RECOMMENDATION
OF HEARING OFFICER

The above entitled matter came on regularly for hearing
on January 29, 1975 in Sacramento, California.

Approved for Report

at Law

Public Accountant

Appearing for the Board:

Mr. C. N. Warner, District Principal Auditor
Mr. C. W. Gentry, Auditor

Protested Item
(Period 10/1/69 to 7/31/72)

Measure
of Tax

E. Cost of trucks acquired from 1/1/72 to
7/31/72 ex-tax and leased to the United
States Government for more than 31 days.
This is mobile transportation equipment
per Regulation 1661.

\$172,148

Petitioner's Contention

The measure of tax should be the rental receipts rather
than the purchase price of the trucks. The trucks leased to the
United States Government are "one-way rental trucks" and should
not be classified as mobile transportation equipment pursuant to
Regulation 1661.

Summary of Petition

Petitioner is a sole proprietorship engaged in the rental of tools, garden equipment, construction equipment, automobiles, trailers, 3/4 ton trucks etc. Miscellaneous sales also are made.

The protested item concerns the rental of pickup trucks to agencies of the United States Government, specifically the United States Forest Service.

Pursuant to bid proposals, contracts are let by the government for the lease of described trucks. The bid solicitation document provides for a periodic rental amount, estimated period of use and the total amount for each specific vehicle. For example, monthly rental \$110, estimated months, 6, amount \$660. The contracts provide for no specific term. Under "Contract Period" it is provided for example that:

"The period of use will be as follows:

Items 4, 5, 6: From approximately May 1 through August 15, 1970."

The above is typical of such provisions for each item (described truck).

Under the terms of the contract the lessee has the unconditional right to terminate the lease upon 24 hours notice.

The audit has regarded the lease of the questioned trucks as constituting a lease of mobile transportation equipment on the basis that such trucks do not qualify as "one way rental trucks" for the reason that they are rented for a term exceeding 31 days. Since Petitioner failed to timely elect to report tax liability on a fair rental basis, tax has been asserted on the sales price of such vehicles to Petitioner.

Petitioner argues that he was not aware of any tax consequences of this particular transaction since he had previously sold some equipment to the United States Government and was informed that sales to the United States Government were exempt from the tax. He, therefore, felt no tax was applicable on the rentals to the United States Government. Petitioner now realizes that the tax is applicable to leases to the government but argues he should be permitted to report the tax measured by rental receipts.

Petitioner further argues that the subject trucks are not mobile transportation equipment but qualify as "one way rental trucks" since the lease term is not 31 days or over by reason of the lessee's right to terminate upon 24 hours notice.

Analysis and Conclusion

Sections 6006 and 6010 of the Revenue and Taxation Code (all references to sections hereinafter are to the Revenue and Taxation Code unless otherwise indicated) exclude mobile transportation equipment from the definition of "sale" and "purchase".

Section 6023 provides in pertinent part that "mobile transportation equipment" includes equipment such as railroad cars, locomotives, buses, and trucks (except "one-way rental trucks").

Section 6024 provides that:

"'One-way rental trucks' are motortrucks of a kind required to be registered under the Vehicle Code, not exceeding the manufacturer's gross vehicle weight rating of 24,000 pounds, which are principally employed by a person in the rental business in being leased out for short-term periods of not more than 31 days to individual customers for one-way or local hauling of personal property of the customers, and which upon acquisition or being employed in this state by the person are identified to the board, in such manner as the board may prescribe, for employment in such one-way or local hauling. Upon the leasing of such a truck to a customer, the person shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes imposed by this part which are payable measured by the rentals."

Under the terms of the rental agreement no definite lease term appears. The estimated period of use of approximately six months does not effectively establish a lease term in excess of 31 days in view of the lessee's unconditional right to terminate upon 24 hours notice. Under such a right the lessee is not obligated to rent the property for a period in excess of 24 hours. Accordingly, it is our opinion that the leases in question qualify as short term leases of not more than 31 days within the meaning of Section 6024. The use of the equipment by the Forest Service under the particular leases also qualifies as "one-way or local hauling of persons or property" within the meaning of Section 6024.

However, to qualify as "one-way rental trucks" the further requirement that the trucks upon acquisition or being employed in this state by the person (lessor) are identified to the Board, in such manner as the Board may prescribe, for employment in such one-way or local hauling. Upon the leasing of such a truck to the customer, the person shall make known to the customer the fact that the vehicle is designated as a one-way rental truck and any taxes imposed by this part which are payable measured by the rentals.

Regulation 1661 provides in pertinent part that once a truck is identified to the Board as a one-way rental truck, the election may not be revoked with respect to the equipment as to which it is made. However, failure of the lessor to make such a timely election will cause such vehicles to be classified as mobile transportation equipment.

Since no tax was reported and paid on the rental receipts from the subject leases, the trucks were not identified to the Board as required and, accordingly, do not qualify as "one-way rental trucks".

Regulation 1661 further provides under subsection (e)(2) that in order to report his tax liability on mobile transportation equipment on a fair rental basis, the lessor must make a timely election to do so. Timely election was not made in the instant case; therefore, the tax was properly measured by the sales price of the vehicles to Petitioner.

Petitioner has argued that some of the trucks leased to the government had previously been leased and identified as one-way rental trucks.

According to the audit, the trucks here involved all were purchased in June 1972, with more than 95 percent of the purchases being expressly for the purpose of leasing to the government, with only a small number leased to the individual customers.

The auditor has indicated that Petitioner's records were not sufficiently detailed to permit an accurate analysis of the claimed use by individual customers. However, rental receipts from the lease of some of the above trucks in the amount of \$4,000 to \$5,000 in June and July 1972 lease receipts were indicated by the auditor in his audit comments. The amounts were treated as an offset against the measure of tax based on the cost of the vehicles.

The trucks from which such rental receipts were received and timely reported should be regarded as one-way rental trucks and their cost deleted from the measure of the tax. The tax should continue to be measured by the rental receipts from the lease of such trucks.

In the event Petitioner can provide identification of those trucks purchased in 1972 which were first rented to individual customers prior to the rental to the United States Government, a reaudit adjustment should be made to delete the cost of such vehicles from the measure of the tax. The reaudit adjustment is to be made by the district office audit staff if warranted upon review of appropriate information submitted by Petitioner. Petitioner will be allowed thirty days in which to submit the necessary information.

Recommendation

Initiate reaudit if warranted in accordance with the above conclusions.

In the event identifying information is not submitted, the determination is to be redetermined without change.

Joseph Manarolla
Joseph Manarolla, Hearing Officer

4/30/75
Date

HJR 5-5-75
REVIEWED FOR AUDIT:

Principal Tax Auditor

Date