

335-1250  
10/7/83

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of the Petition )  
for Redetermination Under the ) DECISION AND RECOMMENDATION  
Sales and Use Tax Law: )  
 )  
 )  
 )  
 )  
Taxpayer )

The preliminary hearing on the above taxpayer's petition for redetermination was held on September 7, 1983, in Oakland, California.

Hearing Officer: James E. Mahler

Appearing for Petitioner: [Redacted]

Appearing for the Board:  
Audit Supervisor  
Auditor

Protested Item

The protested tax liability for the period January 1, 1979, through March 31, 1980, is measured by:

<u>Item</u>	<u>State, Local and County</u>	<u>BART</u>	<u>SCCT</u>
B. Sales of mobile transportation equipment	\$294,735	\$266,780	\$10,565

Taxpayer's Contentions

1. The [Redacted] Machines are not mobile transportation equipment.
2. If any tax is due, it should be determined against petitioner's customer, since the customer orally advised petitioner that the sales were not taxable.

3. Interest on the determination should not accrue after May 1982, since that is the date petitioner first requested a hearing.

SUMMARY

Petitioner is a sole proprietor who manufactures and sells a type of mobile carpet-cleaning machine known as the [redacted]. He began business in September 1975, and this is his first sales and use tax audit.

Each [redacted] Machine weighs about 500 pounds and is designed to be moved from site to site by truck. Steel tracks are installed in the back of the truck so that the machine can be loaded and unloaded with ease. The [redacted] machine is not permanently attached to the truck or tracks, but ball-lock pins are used to prevent roll when the truck is in motion. When the truck arrives at a cleaning site, the [redacted] machine is unloaded and placed onto a wheeled service cart so that it can be moved around as necessary.

Petitioner does not sell the trucks on which the [redacted] Machines are mounted. Sometimes petitioner installs the steel tracks on customer-furnished trucks, but sometimes the customer does its own installation.

During the audit period, petitioner sold a number of [redacted] machines to a company called [redacted] which is headquartered in [redacted], Ohio. [redacted] immediately leased the machines to various California customers, and each lessee picked up its machine at petitioner's place of business in California. Petitioner did not obtain a resale certificate from [redacted]. Nor did he charge tax reimbursement or report and pay tax on the sales, apparently because [redacted] had orally advised him that no tax was due.

According to petitioner's testimony at the preliminary hearing, [redacted] has been engaged in business in California for a number of years, although it did not obtain a California seller's permit until recently.

[redacted] originally did not charge any tax or tax reimbursement on its leases of the [redacted] Machines to California customers. However, the lease contracts contained a provision requiring the lessees to pay any taxes that might be due, and [redacted] has recently collected tax from some of the lessees. Except for the fact that [redacted] recently obtained a California

seller's permit, none of this testimony has been verified by the hearing officer.

The audit staff determined that the \_\_\_\_\_ Machines are mobile transportation equipment (MTE). Since a lease of MTE is not a sale, the staff concluded that petitioner's sales to \_\_\_\_\_ were taxable retail sales.

### Analysis and Conclusions

In relevant part section 6023 of the Revenue and Taxation Code defines the term "mobile transportation equipment" to include "railroad cars and locomotives, busses, trucks...and tangible personal property which is or becomes a component part of such equipment." The \_\_\_\_\_ Machines are not in themselves transportation equipment. Accordingly, they can be regarded as MTE only if they are or become a "component part" of the trucks upon which they are carried.

In previous cases, the Board has determined that mobile generators designed to be installed and actually installed on trailers are MTE. The rationale is that the generators are permanently attached to the trailers and remain on the trailers at all times, even when being used, so that they qualify as component parts of the trailers.

In this case, however, the \_\_\_\_\_ Machines are not permanently attached to the trucks on which they are carried. When the truck arrives at a cleaning site, the \_\_\_\_\_ Machine is unloaded and placed on a service cart before being used. In this respect, the \_\_\_\_\_ Machine is like any other cargo which is transported by truck. The \_\_\_\_\_ Machine is not a component part of the truck, and therefore is not MTE.

Since the clean machines are not MTE, petitioner's sales to \_\_\_\_\_ qualify as exempt sales for resale. The protested item should accordingly be deleted from the measure of tax. In view of our decision, it is not necessary to discuss the other contentions raised by petitioner.

However, we strongly advise petitioner to cease claiming sales for resale without obtaining a resale certificate from the customer. A seller who does not obtain a resale certificate from his purchaser is liable for tax on the sale unless he can prove that the sale was in fact for resale. (See Rev. & Tax. Code §6091; see also

Sales & Use Tax Reg. 1668.) This burden of proof is often difficult to satisfy, especially when the sale has occurred many years in the past. While the evidence was fortunately available in this case, petitioner may not be so fortunate in future audit periods.

Recommendation

Redetermine, deleting the protested item from the measure of tax. Necessary adjustments are to be initiated by \_\_\_\_\_.

James E. Mahler  
James E. Mahler, Hearing Officer

10/7/83  
Date

REVIEWED FOR AUDIT:

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

\_\_\_\_\_  
Date