

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.1933

6/14/85

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

DECISION AND RECOMMENDATION

No. ----

The preliminary hearing on the above taxpayer's petitions for redetermination was scheduled for January 18, 1985, in Santa Barbara, California. Petitioner waived appearance.

Hearing Officer: James E. Mahler

Protested Item

Petitioner protests two determinations issued as a result of an audit and revised audit for the combined period January 1, 1980, through December 31, 1982. The revised audit asserted tax on rental receipts of \$586,989 (state, local and county) and \$50,520 (LACT), of which petitioner is protesting an undisclosed portion.

Taxpayer's Contention

"Petitioner takes exception to the finding as stated in the audit report that petitioner's rentals of the property subject to tax may be characterized as leases under California Revenue and Taxation Code Section 6006.3 and Section 1660 of Title 18 of the California Administrative Code. This finding is erroneous in that the rentals of the property subject to tax constituted uses by the public of tangible personal property for a period of less than one (1) day for a charge of less than \$20.00 where the privilege to use such property was restricted to the business location of the petitioner."

Summary

Petitioner is a corporation which operates --- boating concessions at --- Lake and Lake --- California. We understand that customers have an option to rent boats alone, or to rent boats and motors for a lump-sum charge, but not motors alone. Petitioner purchased the boats and motors from various retailers. Some of the boats were purchased ex-tax and some tax-paid, while all of the motors were purchased ex-tax.

Apparently both lakes are situated on property owned by the --- Water Conservation District (herein-after ---). According to an opinion letter which petitioner received from a private attorney:

"Lake --- is an enclosed body of water with a shoreline of approximately 20 miles. [Petitioner] operates boat and outboard motor concessions on Lake --- pursuant to a comprehensive lease and concession agreement between [petitioner] and --- Lake --- and the surrounding recreation area are owned by --- and operated primarily as a conservation facility. Under the terms of its Federal Power Permit, --- is required to provide the general public with reasonable access to Lake --- for recreational purposes. ---'s entire recreation program was turned over to [petitioner]. Under the agreement, [petitioner] has the exclusive right to operate several designated concessions, including boat rental and outboard motor rental services, in the Lake ---. Recreation Park. [Petitioner] rents boats for fees ranging from \$10.00 for 5 hours on a weekday to \$16.00 for an entire day on a weekend or holiday. Inclusion of an outboard motor with the boat results in an additional fee ranging from \$5.00 to \$14.00. All-day rentals may be used from sunrise to sunset. Rentals for more than one day are not permitted."

Petitioner has submitted no evidence to support these statements. In particular, neither the alleged lease contract nor ---'s Federal Power Permit have been presented. Furthermore, the opinion letter deals only with Lake --- and petitioner has not made any allegations with respect to the operations on --- Lake.

According to the audit staff, petitioner has only concessionaire's rights at these two lakes and is not leasing either lake from --- --- Lake is open to the general public without charge. Lake --- is open to the general public upon payment of a small access fee to ---. At both lakes, --- allows the general public to sail private boats without seeking permission from or making any payment to petitioner.

The audit found that, to the extent the boats and motors had been purchased ex-tax, the rentals by petitioner were taxable leases. Petitioner contends that the rentals come within the exclusion from the term "lease" provided by Revenue and Taxation Code Section 6006.3.

Analysis and Conclusions

1. Section 6006.3 of the Revenue and Taxation. Code provides that the term "lease" does not include:

"... a use of tangible personal property for a period of less than one day for a charge of less than twenty dollars (\$20) when the privilege to use the

property is restricted to use thereof on the premises or at a business location of the grantor of the privilege."

This statute is interpreted in subdivision (e) of Sales and Use Tax Regulation 1660, which provides in relevant part:

"... To fall within the exclusion, the use must be for a period of less than one continuous 24-hour period, the charge must be less than \$20, and the use of the property must be restricted to use on the premises or at a business location of the grantor of the privilege to use the property.... 'Premises' or 'business location' means a building or specific area owned or leased by a grantor or to which a grantor has an exclusive right of use "

According to the figures in the opinion letter which petitioner received from its attorney, the rental prices ranged from a minimum of \$10 (for the least expensive bare-boat rental) to a maximum of \$30 (for the most expensive boat and motor combination) per day. Petitioner has submitted no evidence to show the extent to which the audit measure of tax includes rentals of less than \$20 per day. Lacking such evidence, we are unable to determine the amount in controversy.

More importantly, petitioner has failed to show that the rentals were restricted to petitioner's premises or business location. Petitioner relies solely on the allegations in its attorney's opinion letter. These allegations are unsupported by any evidence and do not even purport to deal with the --- Lake facility. Furthermore, the allegations are contradicted by the audit staff's findings, which petitioner has not denied, that --- allows members of the general public to sail private boats on both lakes without permission from petitioner.

On the state of the record before us, therefore, we conclude that the rentals were not restricted to petitioner's premises or business locations because petitioner was not leasing either lake from ---, and because petitioner did not have a right to exclusive use of either lake.

2. We note that two determinations have been issued against petitioner. The total tax asserted in the two determinations exceeds the tax shown to be due in the audit and revised audit. We recommend that the Petition Unit investigate and make any necessary adjustments prior to redetermination.

3. We are also advised that petitioner has made a partial payment and claimed a refund. We recommend that action on the refund claim be deferred pending resolution of the petitions, and pending full payment of any redetermined liability.

Recommendation

Petition Unit is to investigate and make any necessary adjustments to the amount of tax shown of the face of the determinations. Redetermine without other adjustment to the tax. Defer action on the claim for refund.

James E. Mahler, Hearing Officer

Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

Date