

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

545.0013

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Claim)
for Refund Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)
)
F--- S--- O--- AND G--- COMPANY) No. SZ – XX-XXXXXXX-001
)
)
)
Claimant)

The above-referenced matter came on regularly before Anthony I. Picciano on June 7, 19XX in Hollywood, California.

Appearing for Claimant:

J--- T. M---
Tax Attorney

A--- N---
Senior Tax Supervisor

Appearing for the Sales
and Use Tax Department:

Joseph J. Cohen
District Principal Auditor

Kenji A Miyamoto
Senior Tax Auditor

Protested Item

The protested tax liability for the period July 1, 198X through September 30, 198X is measured by:

<u>Item</u>	<u>State, Local and County</u>
Equipment purchased tax paid in 198X – 198X and resold without use, actual basis claimed \$XXX,XXX.XX divided by .06.	\$X,XXX,XXX

Measure of refund granted per Field Billing Order dated
6/1/90. (\$44,262.52 tax plus interest from date of sale,
was applied 8/1/90 to liability for the period 7/1/82 to 6/30/85). \$ XXX,XXX

Disputed amount. \$X,XXX,XXX

Claimant's Contention

Claimant contends it should receive a refund for tax paid purchases resold because its predecessor (G--- O---) was the agent for all the participants in an oil drilling operation on whose behalf G--- O--- paid the use tax, therefore, it should now be able to act as their agent and receive their refund.

Summary

G--- O--- (G---), now a subsidiary of T---, Inc. aka claimant, was the operator of a joint --- drilling operation (P---) starting on April 1, 198X. P--- was made up of G--- (25% interest), S--- P--- L--- Company (25% interest) P--- Ltd. (25% interest), E--- Inc. (21.875% interest) and I--- (3.125% interest). The purpose of the group was to conduct pre-drilling and drilling of earning wells for another group headed by A--- Q---, Ltd. The only members of the group that are retailers and have seller's permits are G--- and S--- P--- L--- Company.

Various equipment was purchased by R--- D--- & E--- (R---) aka P---, Ltd. from two out-of-state suppliers. That equipment was delivered in California. R--- was the operator of P--- until G--- took over on April 1, 198X. G--- purchased the equipment and paid the use tax which expense it passed on, in addition to other operating costs, to the participants of P--- on a percentage basis. A substantial amount of the equipment was never used and was later sold at auction. It is the credit for subsequent sale of the tax-paid purchases that is the subject of this claim.

Claimant being the successor in interest to G---, asserts it has the right, on behalf of the entire group involved in P---, to the refund of the use tax G--- paid on purchases which were resold. It indicates it should be allowed the refund based on the fact that G--- acted as the agent for all the participants when G--- paid the tax, thus G---'s successor should now be able to act as their agent in the claim for refund.

The Sales and Use Tax Department (Department) denied the claim for refund beyond the extent of G---'s interest. That denial was based upon Sales and Use Tax Regulation 1701(b)(1) which establishes that the person who is qualified to obtain the tax paid purchases resold deduction, or in this case a refund, must be a retailer who sells tangible personal property, provided the property was resold before any use is made of that property.

Analysis and Conclusions

Revenue and Taxation Code Section 6012(a)(1) provides in pertinent part:

"However, in accordance with such rules and regulations as the board may prescribe, a deduction may be taken if the retailer has purchased property for some other purpose than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business."
(Emphasis added.)

When a retailer makes tax-paid purchases of property which he intends to use rather than resell, but later sells the property before making any use of it, a deduction is allowed on that retailer's return in which the sale of the property is included. If the deduction is not taken in the proper quarter by the retailer, a claim for refund may be made. See Sales and Use Tax Regulation 1701 paragraphs (a) and (b)(1). Revenue and Taxation Code Section 6015 provides that a retailer includes every seller who makes any retail sale or sales of tangible personal property. Revenue and Taxation Code Section 6014 defines the term "seller" to include every person engaged in the business of selling tangible personal property for which the gross receipts from the retail sale are required to be included in the measure of sales tax.

The forgoing authority requires, in order to obtain a refund for tax-paid purchases resold, the person claiming the refund must be a retailer. Claimant may be the successor in interest of an agent for the participants in P---, for other purposes, however, that fact does not cause it to have the ability to replace them as a retailer in the state of California. A person may do by agent any act which he might do himself. See Civil Code Sections 2304, 2305. Thus, an agent is limited to acts which its principal might otherwise do. In order to qualify for the refund, the person so claiming must be a retailer. If the other participants could qualify for a refund on their own, then claimant could act on their behalf. To date, the only entity that qualifies as a retailer, other than claimant's predecessor G--, is S--- P--- L--- Company. We find claimant may receive the refund due that entity.

Recommendation

Refund to claimant the proportionate amount due to S--- P--- L--- Company, i.e., twenty-five percent of the amount of tax paid on the purchase of the equipment. Deny the refund for the interests of the other entities that made up P---.

Anthony I. Picciano, Staff Counsel

Date