

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

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

The above entitled matter came on regularly for hearing on August 14, 1987, in Sacramento, California, before Stephen A. Ryan, Hearing Officer.

Appearing for Petitioner:

Appearing for the
 Sales and Use Tax Department: Mr. Marcelo Rodriguez
 Supervising Tax Auditor

Protested Item

On May 5, 1986, petitioner filed a petition for redetermination of a Notice of Determination issued by the Board of April 10, 1986, for the period July 1, 1982 through June 30, 1985. The protest involves tax deficiencies determined on the following audit item:

| | <u>Measure</u> |
|--|----------------|
| A. Sales tax on gross receipts from unreported sales of vehicles | \$421,797 |

Petitioner's Contentions

1. Petitioner is not liable for sales tax on these California sales of vehicles since it did not have a DMV license.
2. If petitioner is liable for any sales tax deficiency, the Board should be estopped from collecting the tax and interest thereon due to incorrect advice rendered to petitioner.
3. Tax has been paid twice to the Board on one transaction.

Summary

Petitioner is a _____ remanufacturer and retailer of various farming equipment. It was formed and began business operations in California in the summer of 1982. I has never possessed a DMV license.

Mr. _____ described the items sold by petitioner. The first is a heavy duty, three-axeled truck with a large type of carrier permanently affixed to it. The carrier was either a spreader to contain manure or a feeder box to contain animal feed. Each truck and attached container was sold as one unit. Containers were also sold separately. Trucks were not sold without containers attached according to him. The hearing officer was shown a brochure containing a picture of a truck unit. It looked as described by petitioner's representatives as a typical garbage truck but with a different style carrier-container on top. Petitioner's representatives said that these truck units can be and are driven on highways but at reduced speeds.

Petitioner is related to _____ which initially conducted business in California. The formation and operations of petitioner were related to _____, according to petitioner's representatives. _____, of _____ had operated in California through independent sales representatives since 1981 without a seller's permit from the Board of Equalization. No California sales or use tax was collected or paid by petitioner to the Board of Equalization on any of its sales of truck units to California customers. In 1982, the Board's Visalia office personnel advised one of the sales representatives of _____, that California sales tax applied to its sales. _____ said he met with Mr. Doug Carroll, the Board's Visalia Branch Office Supervisor, in April of 1982. His understanding was that sales tax applied to such sales. As a result of this meeting and discovery, petitioner was formed to conduct the future business in California. Petitioner obtained a Certificate of Registration-Use Tax from the Board in April of 1982 for its retailing of agricultural equipment business reported as commencing on April 1, 1982.

Petitioner thereafter began to collect sales tax reimbursement or use tax from California customers and to report and pay these amounts to the Board as a result of his discussion with Mr. Carroll according to _____.

A problem arose, however, in a sale to a _____ of a truck and spreader. Petitioner collected sales tax reimbursement and paid it to the Board since the delivery of this unit was made by petitioner's employees to Mr. _____ in California. Mr. _____ described this unit as a vehicle subject to registration or identification with the California DMV. When Mr. _____ attempted to license the unit with the DMV, the DMV would not allow registration without him paying full California use tax to the DMV. Petitioner was contacted and Mr. _____ contacted Mr. Carroll of the Board's Vis alia office. Mr. _____ said Mr. Carroll then said that petitioner should not collect sales tax reimbursement on such sales due to Revenue and Taxation Code section 6292 because petitioner was not licensed by the DMV.

Petitioner then stopped collecting any sales tax from its California customers on sales of the units which included trucks. [It continued to collect sales tax reimbursement or use tax on sales of the carriers without trucks and properly paid these amounts to the Board.] It reported the sales of the truck units on its sales and use tax returns on line 10 as exempt "motor trucks & attached bodies". Mr. _____ said that the Board twice wrote petitioner requesting information

on this claimed exemption to which petitioner responded in writing with an explanation. He said that the Board did not otherwise respond to petitioner's responses.

The file on petitioner contains a copy of a letter dated December 2, 1983 to petitioner requesting an explanation regarding this claimed exemption on its return for the third quarter of 1983. A letter dated December 7, 1983 from Mr. _____ of petitioner was written to the Board in response wherein he explained as follows:

We have shown this as a deduction on the sales-use tax return as it is a Feeder Mixer body attached to a 1976 Ford truck. It is our understanding the retailer is not required or authorized to collect tax from the purchaser on this type of sale.

We originally collected tax in error, on this type of sale and had a couple of conversations with Mr. Doug Carroll and Mr. Grucik, with the State Board of Equalization in Visalia on the proper procedure to follow.

We trust we are now in compliance with California regulations.

A Board employee whose initials are indecipherable to the hearing officer wrote as follows in pencil on the original letter of Mr. _____.

Per Bob G. – Visalia

T.P. not a dealer & cannot collect tax. This is a licensed vehicle & DMV will collect the use tax.

A similar letter was written by the Board to petitioner regarding its return for the first quarter of 1984. Mr. _____ responded in writing as follows:

We are always at a loss on how to report the sales of motor vehicles to you. We originally collected tax but were told not to by the department. The sales consist of a truck with an attached body. Please advise.

The current position of the Board staff as stated by Mr. Rodriguez is that these truck units are not "vehicles" and thus are not subject to DMV registration or identification because they were not sold with an intent to be regularly driven on California highways. The staff thus currently believes that petitioner would not have been prohibited by Revenue and Taxation Code section 6292 from charging and collecting sales tax reimbursement on these sales. The staff, however, has said that the purchasers could have registered or identified these units with the DMV without then paying use tax to the DMV by obtaining form BT-111 from the Board verifying payment of tax to petitioner.

Petitioner's representatives stated and the auditor wrote in his work papers that most deliveries by petitioner to its California customers were done by petitioner's employees using petitioner's delivery trucks upon which these truck units or individual containers were transported from Colorado into California.

Mr. _____ said he spoke to an employee of the DMV regarding these truck unit sales. He said he was advised these truck units constitute implements of husbandry under the vehicle code which are exempt from registration with the DMV but subject to voluntary identification. He also said that he was told that because of this, petitioner did not need to be licensed by the DMV.

Petitioner also disputes the tax imposed on its sale of a truck and feeder unit to an _____ California, for a total price of \$32,915 on May 11, 1983. Petitioner contends that Mr. _____ has paid use tax to the Board so that it has no liability. They said that the truck and feeder unit was delivered to Mr. _____ in _____. The invoice indicates "no Calif. sales tax truck & unit complete". They submitted a copy of a Statement Of Account issued by the Board to Mr. _____ dated February 28, 1986 indicating the payment in full of \$1,974.90 tax on "the cost of auto--_____"

Analysis and Conclusion

California sales tax is imposed upon retailers measured by the gross receipts generated from California retail sales of tangible personal property unless exempt or excluded from the tax (Rev. & Tax. code § 6051). Revenue and Taxation Code section 6091 provides that all gross receipts are presumed to be subject to sales tax unless the retailer proves otherwise.

The type of tangible personal property sold can effect the tax consequences. Sales of certain types of vehicles are subject to special rules (see Chapter 3.5 of the Sales and use Tax Law commencing with section 6271). Generally, the person selling certain types of "vehicles" is only liable for sales tax or use tax collection debts on a California retail sale if he/she is licensed by the DMV. If no DMV license is held, he/she is not liable for sales tax or the use tax collection debt and is also prohibited from collecting sales tax reimbursement or use tax from the purchaser. The purchaser in such a situation must pay California use tax to the State of California.

Revenue and Taxation Code section 6282 reads as follows in pertinent part:

There are exempted from the computation of the amount of the sales tax the gross receipts from sales of mobilehomes or commercial coaches required to be annually registered under the Health and Safety Code or vehicles required to be registered under the Vehicle Code when the retailer is other than a person licensed or certificated pursuant to the Health and Safety Code or the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code.

Revenue and Taxation Code section 6283 provides as follows:

There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code or of a vessel or of an aircraft when the retailer is other than a person required to hold a seller's permit pursuant to

Article 2 (commencing with Section 6066) of Chapter 2 by reason of the number, scope, and character of his or her sales of those vehicles, vessels, or of aircraft, as the case may be. This exemption does not apply to sales of vehicles required to be identified under Division 16.5 (commencing with Section 38000) of the Vehicle Code when the retailer is a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, or dismantler.

Section 6292 reads as follows:

(a) Except when the sale is by lease, when a mobilehome or commercial coach required to be registered annually under the Health and Safety Code or a vehicle required to be registered under the Vehicle Code is sold at retail by other than a person licensed or certificated pursuant to the Health and Safety Code or the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Housing and Community Development acting for and on behalf of the board pursuant to Section 18076.15 of the Health and Safety Code or to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 4750.5 of the Vehicle Code.

(b) If the purchaser makes an application to either department which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the vehicle, he or she then becomes liable also for penalty as specified in Section 6591, but no interest shall accrue.

(c) Application to the appropriate department by the purchaser relieves the purchaser of the obligation to file a return with the board under Section 6452.

(d) If the purchaser does not make application to either department, or does not pay the amount of use tax due, or files a return with the board under Section 6455 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

Section 6293 reads as follows:

(a) Except when the sale is by lease, when a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code is sold at retail by other than a person licensed or certificated pursuant to the Vehicle Code as a manufacturer, remanufacturer, dealer, dismantler, or lessor-retailer, subject to Section 11615.5 of the Vehicle Code, or a person required to hold a seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 by reason of the number, scope, and character of his or her sales of those vehicles, the retailer is not required or authorized to collect the use tax from the purchaser, but the purchaser of the vehicle shall pay the use tax to the Department of Motor Vehicles acting for and on behalf of the board pursuant to Section 38211 of the Vehicle Code.

(b) If the purchaser makes an application to that department which is not timely, and is subject to penalty because of delinquency in effecting identification or transfer of ownership of the vehicle, he or she then becomes liable also for penalty as specified in Section 6591 of this code, but no interest shall accrue.

(c) Application to that department by the purchaser relieves the purchaser of the obligation to file a return with the board under Section 6452.

(d) If the purchaser does not make application to that department, or does not pay the amount of use tax due, or files a return with the board under Section 6455 which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451).

"Vehicle" is defined in Revenue and Taxation Code section 6272 for Sales and Use Tax Law purposes as follows:

"Vehicle" is as defined in Section 670 of the Vehicle Code and shall include off-highway motor vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

Vehicle Code section 670 reads as follows:

A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

The Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971 (Vehicle Code §§ 38000, et seq.) concerns the subject of motor vehicles not used on California highways but "off-highway" on open and accessible public lands (see Vehicle Code §§ 38000, 38001, 38006, 38010, and 38012). Implements of husbandry vehicles are expressly not subject to these provisions (Vehicle Code § 38010(b) (2)).

An "implement of husbandry" is a "vehicle" used exclusively in the conduct of agricultural operations and which is not designed primarily for the transportation of persons or property on a California highway (Vehicle Code § 36000). Implements of husbandry examples are listed in Vehicle Code sections 36005, 36010, and 36015 to include but not be limited to devices transporting agricultural products, including fertilizer. Implements of husbandry which are only incidentally operated on a California highway are exempt from DMV registration (Vehicle Code § 36100). However, an owner of an implement of husbandry may voluntarily obtain DMV identification (Vehicle Code § 36115).

These truck units are devices which are capable of being propelled, moved, or drawn upon a California highway because each unit has wheels, an engine, and a cab for a driver to sit in which can be driven on a California highway. Therefore, the truck units are "vehicles" for Vehicle Code purposes (Vehicle Code § 670). Consequently, the truck units are "vehicles" for

sales and use tax purposes since they meet the definition in Vehicle code section 670 (Rev. & Tax. Code § 6272).

It is our conclusion that these truck units constitute "implements of husbandry" "vehicles" under the Vehicle Code pursuant to section 36000, et seq. This result arises because they were remanufactured by petitioner for, were purchased for, and were actually used exclusively in the conduct of agricultural operations. They were designed exclusively for the transportation and discharge of feed and/or fertilizer on farms and not for the transportation of people or property on California highways. Any actual driving of these units on California highways was incidental in that it was done solely to reach nearby farm property upon which the agricultural products were loaded or discharged.

The Vehicle code expressly defines an implement of husbandry as a vehicle for Vehicle Code purposes (Vehicle Code § 36000). However, it is exempt from DMV registration but can be subject to DMV identification if the owner desires.

Revenue and Taxation code sections 6282, 6283, 6292, and 6293 expressly relate only to vehicles "required to be registered under the Vehicle code" and vehicles "subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle code". These implements of husbandry vehicles are not the type of vehicle required to be registered or to be subject to identification under section 38000, et seq., of the Vehicle Code. Consequently, Revenue and Taxation Code sections 6282, 6283, 6292, and 6293 are not applicable to petitioner when selling these truck unit implement of husbandry vehicles.

The legal result is that the gross receipts from the retail sales of these truck units are subject to California sales tax. Whether or not petitioner held a DMV license is irrelevant. Consequently, petitioner is liable for this sales tax deficiency.

It is our conclusion that no relief from the tax or interest can be granted under these circumstances. The requirements of Revenue and Taxation Code section 6596 have not taken place. No other basis for relief exists.

Petitioner is not liable for any sales tax or any use tax collection debt on its _____ sale to Mr. _____ since that purchaser has paid California use tax to the Board.

Recommendation

Reaudit to adjust the Mendes transaction. Redetermine the remainder without adjustment.

Stephen A. Ryan, Hearing Officer

10-27-87
Date