

STATE OF CALIFORNIA

105.0190

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	
)	
C--- P---, INC.)	No. SY-- XX-XXXXXXX-010
)	
)	
<u>Petitioner</u>)	

The Appeals conference in the above-referenced matter was held by Staff Counsel Lucian Khan on December 12, 1994 in Sacramento, California. On December 9, 1994, representative S--- G--- called, advising that petitioner no longer wished to pursue the petition, and would not be appearing at the conference.

Appearing for Petitioner: Waived

Appearing for the
Sales and Use Tax Department: George Alvarado
Senior Tax Auditor

Protested Item

Disallowed claimed resales (actual basis) to P--- H--- C---/P--- A--- L--- Company ("P---") measured by \$217,237 for the audit period July 1, 1988 through June 30, 1991.

Contention

The sales of modular kitchens are exempt under Sales and Use Tax Regulation 1593(d), since the aircraft had not been previously completed, and the addition of the kitchens was a step in the completion of the aircraft.

Summary

Petitioner is a manufacturer of aircraft component parts. In an audit covering the above period, certain claimed resales of modular kitchens (galleys) to P--- were disallowed. The kitchens were installed in aircraft manufactured by [aircraft manufacturer] and leased to M--- A---. Apparently, there were no resale certificates on file relating to the transactions. The reasons for disallowance are as follows:

1. Petitioner submitted no original purchase document showing when the aircraft was purchased.
2. No documentation was provided showing that the items purchased were placed on the aircraft.
3. No information was provided as to when the aircraft was first put into service, and by whom.
4. The aircraft lease agreements between P--- and M--- did not specify if the aircraft was new or used prior to it being leased to M---. The agreements hold M--- responsible for expenses. Therefore, the sales to P--- could be considered exempt sales for resale; however, P--- could not show that the items purchased were placed on the aircraft leased to M---.
5. Section 3(d) of the lease agreement states that the aircraft is being leased "as is" and "where is". This phrase led the auditor to believe the aircraft was used.

Analysis and Conclusions

Based on the evidence submitted, I conclude the auditor properly disallowed the claimed resales to P---. Revenue and Taxation Code Section 6366.1 provides an exemption from both the sales and use tax for aircraft leased to common carriers. Sales and Use Tax Regulation 1593(d), relates to modification, repair, or replacement of an aircraft. It provides that if, following delivery of the aircraft and prior to its being placed in regular operation by a common carrier, any modification, repair or replacement is performed on the aircraft preparatory to its intended use, the exemption of the aircraft from the tax will not be affected. As to the taxability of the modification, repair or replacement work, it provides that if the modification work is performed on a new aircraft and the parts and materials are furnished by the modifier and such modification constitutes a part of or a step in the manufacture or completion of the aircraft, the charges for such work are exempt under Section 6366 (§ 6366.1).

On the other hand, sales tax applies to the sale of tangible personal property becoming a component part of aircraft which has already been sold, leased or sold for the purpose of leasing to persons using the aircraft as common carriers of persons or property. (National Aircraft Leasing Ltd. v. State Board of Equalization (1979) 90 Cal.App.3d 549.) A party claiming a tax exemption has the burden of showing that he comes clearly within the terms of the exemption statute. (Standard Oil Company of California v. State Board of Equalization (1974) 39 Cal.App.3d 765; 114 Cal.Rptr. 571.)

I note from a review of one of the invoices in issue, that P--- was directly billed for the modular kitchen, while the "ship to" address was that of [aircraft manufacturer]. On its face, this invoice would appear to entitle petitioner to the exemption in Regulation 1593(d); however, because of the problems noted by the auditor and because petitioner must submit sufficient evidence to prove entitlement to the exemption, relief cannot be granted.

Recommendation

Deny the petition.

Lucian Khan, Staff Counsel

Date