

**STATE BOARD OF EQUALIZATION**

916-327-5428

September 26, 1990

[X]

Dear [X]:

Re: [X]

Enclosed is a copy of the Decision and Recommendation pertaining to the petition for redetermination in the above-referenced matter.

I have recommended that the determination be redetermined without adjustment as explained in the Decision and Recommendation.

There are three options available to you at this point.

1. If, after reading the Hearing Decision and Recommendation, you believe that you have new evidence and/or contentions, you should file a Request for Reconsideration. No special form is required to file the Request for Reconsideration, but it must be filed within 30 days from the date of this letter and clearly set forth any new contentions. If new evidence is the basis for filing the request, the evidence must be included. Direct any such request directly to me, with a copy sent to the State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001, Attn: Principal Tax Auditor. I will subsequently notify you whether the request has been taken under review or whether the request is insufficient to warrant an adjustment. If I conclude that no adjustment is warranted, I will then notify you of the procedure you can follow to request an oral hearing before the Board.

2. If, after reading the Hearing Decision and Recommendation, you find that there is no basis for filing a Request for Reconsideration, but nevertheless desire to have an oral hearing before the Board, a written request must be filed within 30 days with Ms. Janice Masterton, Assistant to the Executive Director, Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001.

3. If neither a request for Board hearing nor a Request for Reconsideration is received within thirty (30) days from the date of this letter, the Hearing Decision and Recommendation will be presented to the Board for final consideration and action.

Very truly yours,

Susan M. Wengel
Hearing Officer

SMW:te
Enc.

cc: Ms. Janice Masterton
Assistant to the Executive Director (w/enclosure)

Mr. Glenn Bystrom
Principal Tax Auditor (file attached)

Van Nuys – District Administrator (w/enclosure)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

135.0272

APPEALS UNIT

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

HEARING
DECISION AND RECOMMENDATION

[X]

Petitioner

The above-referenced matter came on regularly for hearing before Hearing Officer Susan M. Wengel on March 20, 1990, in Van Nuys, California.

Appearing for Petitioner:

[X]

[Y]

Appearing for the Department
of Business Taxes:

Gerald Dunlay
Senior Tax Auditor

Ira Anderson
Supervising Tax Auditor

Protested Item

The protested tax liability for the period January 1, 1985 through December 31, 1987 is measured by:

<u>Item</u>	<u>State, Local and County</u>	<u>Transit</u>
A. Ex-tax purchases from out-of-state vendors, subject to use tax:		
Capital assets, actual basis	\$ 143,848	\$ 143,848
Expense items, test basis	1,067,712	1,088,199

Contentions of Petitioner

1. [X] is exempt from use tax under Insurance Code Section 11493.5 as it is a nonprofit hospital service plan.

Summary of Petition

Petitioner is a corporation which began business in California in 1982 as a non-profit health service provider. During petitioner's first audit, a review was made by the Department of Business Taxes (Department) of bills paid by petitioner which involved purchases of tangible personal property from out-of-state vendors. Due to the vast number of bills involved, the Department reviewed every other drawer of bills for an entire year. The results of this test were projected over the entire audit period and a use tax was assessed.

Petitioner's sole contention is that it is a nonprofit hospital service corporation as it is regulated by the Department of Insurance, collects premiums, pays claims and is allowed by the Internal Revenue Service to deduct "claims reserves" on its federal income tax returns. As such petitioner claims to be exempt from the California use tax under Insurance Code Section 11493.5.

Analysis and Conclusions

Initially, it is noted that petitioner does not contend that it is an insurance company. It is not an insurer which files tax returns with the Insurance Commissioner or pays a gross premium tax. Petitioner's position is that it is exempted from use tax because of Insurance Code Section 11493.5 which provides:

"Every nonprofit hospital service corporation organized or admitted under this chapter is hereby declared to be a charitable and benevolent institution and all of its funds and assets shall be exempt from all and every state, county, district, municipal and school tax and other levies other than taxes on real estate and office equipment. The provisions of this section prohibit the imposition of a tax on the transfer of tangible assets to a nonprofit hospital service plan, licensed on or after July 1, 1982, under Chapter 11a (commencing with Section 11491) of Part 2 of Division 2, from another nonprofit hospital service plan. This prohibition is applicable only to transfers concluded before January 1, 1983."

It is not disputed that petitioner is a nonprofit hospital service corporation operating under the authority of the Insurance Commissioner. The sole issue is whether, as a nonprofit hospital service corporation, it is exempt from California's use tax. We must conclude that it is not.

Although petitioner contends that the case of Hospital Service of California v. City of Oakland (1972) 25 Cal.App.3d 402 is distinguishable from the present case, we cannot agree. This case, which deals with an excise tax, clearly holds that section 11493.5 only exempts hospital service corporations from a property tax on their funds. It does not exempt these corporations from excise taxes, such as California's use tax. Petitioner, by purchasing tangible personal property for use in this state and using it here, has voluntarily and properly subjected itself to California's Use Tax (see Revenue and "Taxation Code Sections 6201-6207).

Recommendation

It is recommended that the tax be redetermined without adjustment.

Susan M. Wengel, Hearing Officer

August 29, 1990
Date