

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.2283

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law) OF HEARING OFFICER
)
J--- L. G---)
AND)
W--- C. R---,)
a partnership,)
dba K--- M--- R---) Account No. S- -- XX XXXXXX
)
Petitioner)

The above entitled matter came on regularly for hearing on Tuesday, October 22, 1974 in Modesto, California.

Appearing for Petitioner:

Mr. R--- M. S---, Attorney at Law

Appearing for the Board:

Mr. John Yohannon, Supervising Auditor

Protested Item
(Period 7/1/70 to 3/31/73)

	<u>Measure of Tax</u>
Taxable rental of horses claimed exempt.	\$7,597

Petitioner's Contention

The tax does not apply to the rental of horses.

Summary of Petition

Petitioner is a partnership operating a seasonal resort. The activities include the rental of cabins, rooms and horses.

The protested item is concerned with the taxability of horse rentals. The rental of horses falls into three categories; pack trips, all day rentals and hourly rentals. The auditor has determined that the only category in which the tax is applicable is the all day rentals. The pack trips are under the direction and control of the packer and are regarded as the performance of a service with no tax applicable to the use of the horses. The hourly rental category consists of rentals of horses for a period of less than 24 hours with a charge of less than \$10.00 with the use of the property restricted to the premises of the grantor of the privilege and thereby not subject to the tax.

The all day rentals are described as consisting of all day rides, usually to [name] Lake approximately five miles from the resort on land leased by Petitioner from the government. Those trips are unattended; the riders proceed to the lake and return without a guide or attendant. The charge for the use of the horses on those trips is \$10.00 or greater, and have been regarded by the auditor as not qualifying for exemption as the grant of a privilege.

Petitioner initially contended that no tax applied to the rentals on the grounds that the horses were purchased tax-paid. At the hearing it was argued that the use of the horses qualified for exemption on the basis of being under the direction and control of Petitioner.

Analysis and Conclusion

With respect to the initial contention, the audit has established that all of the horses involved with the protested item were acquired ex-tax in occasional sales transactions. Since Petitioner failed to make a timely election to pay the tax on the cost of the horses as required by Regulation 1660(c)(5), the rental receipts from the rentals are subject to the tax.

The contention that the use of the horses for all day trips constitute an exempt service cannot be sustained.

The chief characteristic of a renting or leasing is the giving up of possession to the hirer, so that the hirer and not the owner uses and controls the rented property. (Entremont v. Whitsell, 13 Cal. 3d 290.)

Under Petitioner's mode of operation with respect to the all day rentals, the essential elements of a renting or leasing are present. Possession of the horses are given to the customers who proceed on the day trip and return unaccompanied by any employee of Petitioner. The fact that the route to the lake may be marked or that the trip is limited to travel over land leased by Petitioner does not detract from the exercise of fundamental control by the lessee. The custody and control over the leased land is not imputed to the possession and use of the horses by the customers.

It is concluded that the all day rentals were properly classified as leases of tangible personal property, the rental receipts from which are subject to the tax.

J--- L. G--- and
W--- C. R---
S- -- XX XXXXXX

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January 8, 1975

330.2283

Recommendation

That the determination be redetermined without adjustment.

Joseph Manarolla, Hearing Officer

1/8/75

Date