

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**330.2847**

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition )  
for Redetermination Under the ) DECISION AND RECOMMENDATION  
Sales and Use Tax Law of: )  
)  
E--- E. B--- AND ) No. SR -- XX-XXXXXX-010  
P--- E. F--- )  
)  
Petitioners )

The Appeals conference in the above-referenced matter was held via telephone by Elizabeth Abreu on December 7, 1993 in Sacramento, California.

Appearing for Petitioners:

P--- F---  
Partner

Appearing for the  
Sales and Use Tax Department:

Leon Adams  
District Principal Auditor

Protested Item

The protested tax liability for the period October 1, 1989, through September 30, 1992, is measured by:

<u>Item</u>	<u>State, Local and County</u>
A. Ski rental receipts not reported as taxable measure	\$ 181,555

### Petitioner's Contentions

Petitioners reasonably relied upon erroneous oral advice given by a Board employee in the Nevada City office that rentals of ski equipment are not subject to tax if the rental receipts are less than \$20.

### Summary

During the periods in issue, petitioners formed a partnership to own and operate a ski rental shop which rented ski equipment and sold items such as goggles, sunglasses, hats, and gloves. Petitioners' business was not part of a ski resort but was located within two to three miles of five ski resorts. Petitioners purchased rental equipment ex-tax but did not charge its customers tax reimbursement on the rentals.

Initially, the business was owned by another partnership in which E--- B--- was a partner. In 1985, Mr. B--- purchased the business from the partnership and became its sole owner. P--- F--- became an equal partner with Mr. B--- in November 1988. Mr. F--- subsequently purchased Mr. B---'s interest in the partnership property and is currently the sole owner of the business. Hereinafter, Mr. F--- will be referred to as the "petitioner."

Petitioner contends that prior to the time he became a partner, Mr. B--- visited a Board office and was told that rentals of ski equipment for less than \$20 were not taxable. After petitioner became a partner, he visited the Nevada City office of the Board to obtain instructions for completing sales and use tax returns. Since filing returns was one of his responsibilities with the partnership, he wanted to verify that the advice Mr. B--- received from the Board was correct.

Petitioner stated that he went through a sales and use tax return line by line with a Board employee who indicated to him that rentals for less than \$20 were not subject to tax. During their conversation, the Board employee asked where the shop was located. Petitioner explained that it was an independent shop and that it was not part of a ski resort.

The rentals for a few demonstration packages totalled \$20, but most of petitioner's package rentals were for less than \$20. Petitioner did not pay tax on the rentals for either the demonstration packages or package rentals under \$20.

Petitioner does not dispute the measure of tax in the audit but contends that he should be relieved from liability because he reasonably relied upon erroneous advice given by a Board employee.

### Analysis and Conclusions

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. Although the sales tax is imposed upon the retailer, the retailer may collect sales tax reimbursement (usually itemized on the invoice as "sales tax") from the purchaser if the contract of sale so provides. (Civ. Code § 1656.1.)

Revenue and Taxation Code section 6201 imposes a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. The use tax, which complements the sales tax, is most frequently imposed upon in-state leases, use in California of property purchased out-of-state, and use of property purchased with a resale certificate.

Special rules apply to the application of tax to leases of tangible personal property. A lessor of certain types of tangible personal property generally may elect to pay tax under one of two methods. Under the first method, the lessor pays tax "up front" on the purchase price of the property which the lessor will lease. That is, the lessor either pays sales tax reimbursement to his or her vendor or pays use tax measured by the purchase price of the tangible personal property. If the lessor leases such property in substantially the same form as acquired, the lease is not a sale or purchase, and the lessor does not collect and pay tax on the rentals. (Rev. & Tax. Code § 6006(g)(5) and 6010(e)(5) and Sales and Use Tax Reg. 1660(c)(2) and (3).)

Alternatively, when purchasing the property, the lessor may purchase the property ex-tax by giving a resale certificate to the seller. Leases of such property are continuing sales and purchases subject to use tax which the lessor must collect from the lessee and pay to the state. The use tax is measured by rentals payable. (Rev. & Tax. Code §§ 6006(g), 6006.1, 6010(e), and 6010.1 and Sales and Use Tax Reg. 1660(c)(1).)

Generally a lease is a temporary transfer of the possession of tangible personal property for consideration and includes rental, hire, and license. A lease does not include, however, a use of tangible personal property for a period of less than one day for a charge of less than twenty dollars when the privilege to use the property is restricted to use on the premises or at a business location of the grantor of the privilege. (Rev. & Tax. Code § 6006.3.) In such transactions, the grantor of the privilege is the consumer of the property, and the charges for the privilege to use the property are not subject to tax. (Sales and Use Tax Reg. 1660(e)(4).)

In this case petitioner's transactions did not come within the exclusion from the definition of lease because petitioner's customers used the ski equipment at ski resorts and not on petitioner's premises. Thus, petitioner was leasing the equipment. Since petitioner purchased the equipment ex-tax, the leases were continuing sales and purchases, and the rental receipts were subject to tax.

Petitioner contends that he should be relieved from tax because he reasonably relied upon erroneous advice from an employee of the Board. Revenue and Taxation Code section 6596 provides the only basis for relief from tax and interest where a taxpayer relies upon erroneous advice from the Board. A taxpayer is not entitled to relief under this section unless the taxpayer makes a written request for advice, the request discloses all relevant facts, the Board responds in writing to the taxpayer's request, and the taxpayer relies upon the advice in the Board's written response.

I found petitioner credible and believe that he was given erroneous oral advice which he relied upon. However, petitioner does not meet the requirements of section 6596 for relief from tax and interest because petitioner did not make a written request for advice and did not receive written advice from the Board. Therefore, no relief can be recommended.

Recommendation

It is recommended that the petition be denied.

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Elizabeth I. Abreu, Staff Counsel

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Date