

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.3015
8/20/1980

In the Matter of the Petition)
for Redetermination of State)
and Local Sales and Use Taxes)
)
)

Petitioner)

DECISION AND RECOMMENDATION

The above-entitled matter came on regularly for hearing on July 7, 1980, in Pasadena, California, before H. L. Cohen, Hearing Officer.

Appearing for Petitioner: ---
Attorney at Law

Appearing for the Board: Mr. R. N. Landes
Auditor
Hollywood District

Protest

Petitioner protests the assertion of tax on rentals of tuxedos purchased ex-tax. Tax was asserted based on an audit covering the period from January 1, 1976, through December 31, 1978. A deficiency determination was issued on October 10, 1979. The amount upon which the protested tax is based is \$274,986.

Contentions

Petitioner contends that:

1. Petitioner's business is similar to a linen supply service which is exempt from tax.
2. Petitioner should not be held liable for the tax because it was informed by an employee of the Board that no tax was due.
3. If tax is due, it is due on the purchase price rather than rental receipts.

Summary

1. Petitioner is a partnership engaged in renting and selling tuxedos and accessories. It began in business in 1969. There has been no prior audit.

2. Petitioner buys tuxedos ex-tax from both California and out-of-state sources. Petitioner reports and pays tax on outright sales but not on rental receipts. Tuxedos are altered to fit individual customers and dry-cleaned when they are returned. The auditor asserted tax on rental receipts because petitioner had not paid sales tax reimbursement or use tax on the purchase price at the time of purchase.

3. Petitioner states that it assumed that tax was paid at the source since no resale certificates were issued. Petitioner argues that the failure to issue resale certificates constitutes an election to pay tax on cost rather than rental receipts. Petitioner also argues that if tax is due, it is due on cost because the required election was made.

4. Petitioner argues that the rental of tuxedos constitutes a service activity which is exempt from tax under Section 6006(g) (2) of the Revenue and Taxation Code and under Sales and Use Tax Regulation 1660(b) (1).

5. Petitioner states that at the time it acquired its seller's permit, it was informed by an employee of the Board that tax did not apply to its rental receipts; therefore, it is unfair to assert tax now.

Analysis and Conclusions

1. Section 6006(g) (2) of the Revenue and Taxation Code provides that "sale" does not include a lease of "linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles". The Board, in adopting Sales and Use Tax Regulation 1660, has interpreted and clarified the statute. Subdivision (b) (1) (B) of the Regulation provides that tax does not apply to leases of "linen supplies and similar articles, including such items as towels, uniforms, coveralls, shop coats, dust cloths, caps and gowns, etc., when an essential part of the lease is the furnishing of the recurring service of laundering or cleaning of the articles leased". The Regulation has included this provision since December 21, 1972. While conceding that leases of tuxedos are similar to leases of caps and gowns, nevertheless it is required that the recurring service of laundering or cleaning be an essential part of the lease. We have in the past regarded leases of caps and gowns to be exempt under Section 6006(g) (2) only where an educational institution leased caps and gowns for several years, and a conclusion could, therefore, be reached that recurring cleaning was an essential part of the multi-year lease. Individual leases of caps and gowns without recurring cleaning for the particular lessee are not regarded as exempt. Similarly individual leases of tuxedos without recurring cleaning for the particular lessee cannot be regarded as exempt.

2. Section 6006(g) (5) of the code excludes from the definition of "sale" only those leases of tangible personal property acquired in a transaction that was a retail sale with respect to which the retailer paid sales tax or as to which the lessor has paid use tax. Petitioner paid no sales tax reimbursement to its vendors and has not shown that the vendors paid sales tax on the sales of tuxedos to petitioner. Regulation 1660 provides in subdivision (c) (2) that a lessor who desires to pay use tax on the purchase price of leased property must do so when the property is first placed in lease service. That is the only method provided for making the election to pay tax on the cost of the leased property. The failure to issue a resale certificate to the vendor of the property does not constitute such an election.

3. Petitioner states that it was informed by a Board employee that no tax was due on its leases. There is no evidence as to the specific questions asked by petitioner or what reply was given.

The employee may have misunderstood the questions or petitioner may have misunderstood the answers. At any rate, an exemption cannot be created by an error of a Board employee. See Market Street Railway Co. v. State Board of Equalization, 137 Cal. App. 2d 87.

Recommendation

Redetermine without adjustment.

H. L. Cohen, Hearing Officer

8/12/1780

Date

Reviewed for Audit:

Principal Tax Auditor

Date