

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.3565

In the Matter of the Petition for)
Redetermination Under the Sales) DECISION AND RECOMMENDATION
and Use Tax Law of:)
)
A--- C--- CORPORATION) No. SR -- XX-XXXXXX-010
)
Petitioner _____)

The preliminary hearing on the above taxpayer's petition for Redetermination was held on August 11, 1983, in Sepulveda, California.

Hearing Officer: John B. Adamo
Appearing for Petitioner: Mr. R--- M. S---
Certified Public Accountant
Appearing for the Board: Mr. George Swab
Auditor
W. E. Burkett
Tax Counsel

Protested Item

The protested tax liability for the period January 1, 1979 through December 31, 1981 is measured by:

<u>Item</u>	<u>State, Local and County</u>
Unreported labor and expense items Billed with costume rentals	\$220,084

Contention of Petitioner

Amounts charged for costume selection, cleaning, and dyeing did not constitute part of the "sales price" of the costume rentals as these services were contracted for separately.

Summary

Petitioner, a corporation formed on January 1, 1979 is engaged in the business of leasing costumes to the motion picture and television industry.

Petitioner maintains a large selection of costumes, uniforms, and period clothes. When contacted by a producer requiring some of these costumes, petitioner sends a price list describing the available items and their lease prices. Generally, the producer sends his own wardrobe personnel to petitioner's location to select the needed costumes. The producer signs a "shipping sheet" upon taking possession of the costumes which sets forth the rental price and other provisions of the lease agreement, including that the lessee must either clean the costumes before returning them to petitioner or pay petitioner for this service. An invoice is subsequently sent to the producer setting forth the costume rental charge. Required alterations are performed by petitioner and separately set forth on the invoice; charges for cleaning and dyeing are similarly invoiced.

On occasion, producers are unable to send their own wardrobe personnel to petitioner's location to select the required costumes. In these cases, petitioner selects the needed wardrobe for the producer, and includes a separate charge for this service in the invoice. The aforementioned "shipping sheet" does not state that this later service constitutes part of the lease agreement. At the preliminary hearing conducted on this matter, petitioner's representative stated that petitioner and the producer will verbally agree as to the charge for this service. Petitioner did not collect use tax on the separately stated charges for costume selection, alteration, laundry, and dyeing.

The auditor concluded that these services constituted part of the sales price of the lease transactions, and that petitioner should have collected use tax on the amounts charged for those services. (Business Taxes Law Guide, Anno. 295.1690, Aug. 16, 1978.) Petitioner has conceded that the charges for alteration did constitute part of the sales price for the costume rentals. It asserts, however, that the above cited annotation supports its position that remaining services (i.e., costume selection, cleaning, and dyeing) were not part of the sales price for the costume rentals.

Analysis and Conclusions

Leases of tangible personal property are defined as sales by Revenue and Taxation Code Section 6006(g), subject to certain exceptions specified in the law which are not relevant here. (See Sections 6006(g)(1-6) and 6006.3.) The principal tax imposed on a lease transaction and the one applicable here, is a use tax imposed on the lessee; the sales tax is imposed on the lessor when the use tax is not applicable. (Section 6390 and 6401.) The lessor is required to collect the use tax from the lessee. (Section 6203.)

Use tax is imposed on the "sales price" of tangible personal property purchased for storage, use, or other consumption in this state. (Section 6201.) The term "sales price" is defined by Section 6011 and includes the total amount for which tangible personal property is sold or leased without any deduction for, among other things, labor or service costs.

As previously noted, both the auditor and petitioner cite Business Taxes Law Guide Annotation 295.1690 in support of their respective positions. In pertinent part, that annotation provides as follows:

“Services that are part of the sale’ include any the seller must perform in order to produce and sell the property, or for which the purchaser must pay as a condition of the purchase and/or functional use of the property, even where such services might not appear to directly relate to production or sale costs.” (Emphasis added.)

Petitioner, relying on the emphasized portion of the above quoted regulation, maintains that it is not required to perform any services under the “shipping sheet,” and that the amounts charged for these services should not be included in the “sales price.” The auditor asserts, in essence, that petitioner could not lease its costumes without performing these services and that petitioner’s customers must pay for these services as a condition of the lease and in order to use the costumes.

The mere fact that the “shipping sheet” may not reflect the charges made for the services in issue does not mean that those services are not part of the lease agreements. Initially, we note that the “shipping sheet” does provide for a cleaning charge whenever the lessee does not launder the costumes before return. Moreover, the charges for costume selection and dyeing are made in conjunction with the lease agreement and reflected on the invoices which constitute an integral part of the costume rental agreements. The invoice reflects the producer’s and petitioner’s previous verbal agreement with regard to services performed as part of the lease agreement. The unchallenged fact is that, with respect to those leases under which these services are performed, the lessee must pay for those services both as a condition of the lease and in order to make use of the costumes. The fact that a producer may avoid these charges by performing the services himself, e.g., selecting the wardrobe, etc., does not mean that these services are not part of the lease when the parties so agree.

Recommendation

Redetermine without adjustment.

John B. Adamo, Hearing Officer

9/23/83

Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

Date