



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

August 7, 1975

V--- Corporation
R--- C--- Car Wash
XXXX --- Boulevard
--- ----, Calif. XXXXX

SR -- XX XXXXXX

Attention: Mr. R--- M---

Dear Mr. M---:

Enclosed is a copy of the decision and recommendation made in respect to the petition of J--- M--- and F--- G--- filed by you last January 3, 1975.

The petition was construed to contain a request for a Board hearing which is noted. If a hearing before the Board is still desired, please indicate so by return mail and the matter will be set as soon as possible.

For your information, and as agreed, I have enclosed a copy of the hearing summary prepared for the Board in the matter of the petition of S--- P--- Car Wash. The issue in that case is the same as in the petition of R--- C--- Car Wash, and the facts with respect to sales of gasoline and car washes are substantially identical.

Very truly yours,

Robert H. Anderson
Tax Counsel

RHA:RW
Enclosure

Bc: Inglewood – District Administrator
Attached are copies of the Decision and Recommendation

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

395.0160

In the Matter of the Petition for)
Redetermination of the State and Local)
Sales Tax;)
)
J--- M--- & F--- G---)
dba R--- C--- CAR WASH,)
)
_____)
Petitioners.)

DECISION AND RECOMMENDATION
OF HEARING OFFICER

No. SR -- XX XXXXXX

The above-entitled matter came on regularly for hearing on Monday, July 14, 1975 in Inglewood, California.

Appearing for Petitioner:

Mr. R--- M---, President¹
V--- Corporation
XXXX --- Boulevard
--- ---, California XXXXX

Appearing for the Board:

Mr. R. B. Petersen, Principal Auditor
Inglewood District

Mr. R. E. Blomquist, Auditor
Inglewood District

Protest

Pursuant to an audit covering the period from 08-21-72 through 03-31-73, and a determination issued on December 11, 1974, Petitioners protest the assessment of sales tax on the retail sale of a business consisting of assets used in the operation of a gasoline sales enterprise and a car wash service.

The measure of the audited liability is \$XX,XXX and represents the gross receipts from the car wash equipment.

The total reaudited measure of tax was \$XXX,XXX which included a small amount representing receipts from the sale of office equipment which is not protested. Tax was paid on equipment used in making sales of gasoline measured by \$XX, XXX and this was credited against the \$XXX,XXX leaving a net liability measured by \$XX,XXX.

¹ V--- Corporation is a successor to the business and contractually is liable for the tax as between buyer and seller.

Contentions

The sale of car wash equipment is not subject to tax as this was a service and the items were not used in connection with a business requiring a sales tax permit.

Summary

The facts are not in dispute. Petitioners, M--- and G--- were partners and owners of the business in question. The business began on or about August 21, 1972, and included retail sales of gasoline and car washes.

The car wash sales were tied into retail sales of gasoline as follows:

Cost of Car Wash

- \$1.75 without gas purchase.
- 1.19 with purchase of 7 to 11.9 gallons of gas.
- .69 with purchase of 12 to 14.9 gallons of gas.
- .29 with purchase of 15 or more gallons of gas.

On March 11, 1973, the business was sold to the V--- Corporation for \$500,000 which did not include land. Ownership in V--- was held by R--- M--- and V--- F. N--- so the change in ownership pursuant to the sale was substantial.

Petitioners reported \$13,185 as the measure of tax on the sale of service station assets.

The auditor originally set up the sales price of the assets based on net book values as of December 31, 1972, as follows:

Office Equipment	\$	1,889
Leasehold Improvements		37,009
Car Wash Equipment		118,445
Neon Sign		8,189
		<hr/>
		165,542
		Less reported
		13,185
Additional measure	\$	152,357

On or about May 17, 1974, there was an office conference with Mr. M---, president of the successor corporation with the result that a reaudit was made which reduced the audited measure of tax to the amounts shown under protest above. The reaudit was based on deleting leasehold improvements and reducing the book value of office and car wash equipment to reflect additional depreciation and cost of attachment estimated at 10 percent. The neon sign was also deleted.

Thus, this controversy is solely over the assessment of tax on receipts from the sale of the car wash equipment.

The land on which the car wash equipment is located is leased from a N--- L. and G--- E. C--- under a lease dated March 6, 1974.

The owners of the equipment, M---/G---, not only had a right to remove the equipment, they had an obligation to do so if and when the lease was terminated and they vacated the premises.

The lease was assigned to N---/M---, owners of V--- Corporation, and was approved by the C---s. N---/M--- subleased the premises to V--- Corporation.

It is understood that the sublease by N---/M--- to V--- contained a provision that restricted the removal of the equipment without the consent of N---/M---. This point was raised in the petition to argue that the property was realty after the sale, but it was not raised at the hearing.

Conclusions

Notwithstanding the restriction placed on the corporation with respect to the removal of the equipment, the property was tangible personal property when sold by M---/G--- who did have a right of removal and it is M---/G--- who are liable for the sales tax on the sale.

Further, the restriction is meaningless in light of the fact that it was placed on the corporation by N---/M--- who also owned the corporation. Regardless of the restriction placed on a sublease there is still the right of removal in the prime or original lease with the C---s.

With respect to the issue of whether the equipment was or was not held in an activity requiring a seller's permit, it is concluded that it was so held.

Transactions qualifying as occasional sales are limited to the specific definitions set forth in section 6006.5 of the California Revenue and Taxation Code (see U.S. Industries v. State Board of Equalization (1962) 198 Cal. App. 2d 775). Inasmuch as the real and ultimate ownership of the equipment, after the sale, was substantially changed the provisions of subsection (b) of section 6006.5 do not apply.

Petitioner raises the issue which requires the application of subsection (a) of section 6006.5 which defines a transaction as an occasional sale where the property sold was not held or used in the course of a business activity for which a seller's permit was required.

Petitioners held a seller's permit because they were making retail sales of gasoline. The car wash activity was an integral part of that same activity as evidenced by the way car washes were sold. Thus, it is concluded that the sale did not meet the test under subsection (a) of section 6006.5 either.

The Board considered a similar matter when it heard the petition of S--- P--- Car Wash, SR -- XX XXXXXX on August 14, 1974. The case was decided on January 8, 1975, when the Board concluded that the transfer of equipment did not qualify as an occasional sale. In that case, as here, the sales of gasoline and the car wash function were an integral part of the same business activity.

Recommendation

Redetermine without adjustment.

Robert H. Anderson, Hearing Officer

JUL 28, 1975
Date

Reviewed for Audit:

Principal Tax Auditor

Date