

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

395.0570

In the Matter of the Petition For Redetermination) of Sales Taxes and Transactions Taxes,)) H---'S B--- COLLEGE,) Petitioner)	DECISION AND RECOMMENDATION OF HEARING OFFICER Account No. SR – XX-XXXXXXX
In the Matter of the Petition For Redetermination) of Sales Taxes;)) H---'S B--- COLLEGE) dba S--- B--- B---) COLLEGE,) Petitioner)	Account No. SR – XX-XXXXXXX
In the Matter of the Petition For Redetermination) of Sales Taxes;)) H---'S B--- C---) dba K--- – J--- COLLEGE,) Petitioner)	Account No. SR – XX-XXXXXXX

The above-entitled matters came on regularly for hearing on Monday, November 20, 1972 at 3:00 p.m., in San Francisco, California.

Appearances:

For Petitioners:	Mr. E. B---, Controller H--- Colleges
For Board of Equalization:	Mr. E. Hargrove, Aud. Supervisor San Francisco District

Protests

Petitioners protest the following items and amounts:

SR -- XX-XXXXXXX: Sales of furniture and equipment measured at the 5 percent rate on \$734 and at the ½ percent rate on \$99. Audit period: 4/01/69 through 12/31/71.

<u>SR -- XX-XXXXXXX</u> : Sales of furniture and equipment; measure	\$1,269
Bulk sale of furniture and equipment	<u>4,529</u>
Audit Period: 04/01/69 through 11/15/71.	Total \$5,798

SR -- XX-XXXXXX: Sale of furniture: \$529*. Audit Period: 4/01/69 through 12/31/71.

*Only the measure of tax is protested.

Contentions

Transfers of equipment from one school to another amounted to transfers from a school of a parent corporation to a school of a wholly owned subsidiary corporation and were not intended to be sales or in the alternative were occasional sales.

Sale of fixtures and equipment made in conjunction with the sale of the business was an occasional sale and exempt from taxation.

Summary

Hearings on the above three accounts were held in conjunction with hearings on four I--- B--- Schools, Inc. accounts. Exhibit I is a list of the entities, schools, and accounts involved.

Generally, H---'s B--- College is a corporation that operates business schools at different locations. Each school held a seller's permit for the purpose of reporting sales of school textbooks and supplies to students.

Schools were located in San Francisco, Oakland, Santa Barbara, San Diego, San Mateo, Hayward, San Jose, and Sacramento. There was no determination issued against the San Mateo, Hayward, San Jose, and Sacramento accounts because the amounts were too small to assess.

H---'s B--- College is a wholly owned subsidiary of I--- B--- Schools, Inc. I---, like H---'s operated a few schools too. There were some transfers of school equipment from H---'s schools to I---'s schools and vice versa. These were made at book value at the time of the transfers and were recorded as inter-corporate receivables and payables. The audit revealed that between the two corporate entities transfers by H---'s Business College to I--- B--- Schools had a total book value of \$3,131 while transfers by I--- B--- Schools to H---'s B--- College had a total book value of \$2,825. Offsetting receivables and payables produced a net of \$303 due H---'s from I---.

In the course of events after the periods covered by the various audits, I--- B--- Schools (the parent) was merged (by statutory merger) into H---'s B--- College and the name of the surviving corporation was changed to H--- Colleges. Today there is only one permit or account and it is under number SY -- XX-XXXXXX.

Inter-corporate transfers of equipment were not considered to be retail sales by those in control of the corporations even though they were set up at book value as payables and receivables. Further, the transfers of equipment were not transfers of equipment held and used in any activity for which the

various schools held seller's permits. Without the bookstore operations, the schools (educational facility) did not need a seller's permit.

The audit of the San Francisco account, SR -- XX-XXXXXX, resulted in a net credit and this was not protested by H---'s B--- College.

The following is a summary of the transfers of school equipment from one school owned by H---'s to another school owned by I--- and sales of school equipment to unrelated persons between April 30, 1969 and December 31, 1971:

SR – XX-XXXXXX (San Francisco)	15 transfers 11 sales	\$2,138 2,571
SR -- XX-XXXXXX (Oakland)	1 transfer 13 sales	75 1,702
SR -- XX-XXXXXX (Santa Barbara)	2 transfers 3 sales	650 5,148*

*Includes one bulk sale for \$4,529.

SR -- XX-XXXXXX (San Diego)	1 sales	529*
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*Petitioner contents and has proven this should be \$305.

All of the sales and the transfers deemed to have been sales and which are included in the above schedule were those involving fixtures and equipment only. No bookstore sales were included. In other words, only the sales of fixtures and equipment were considered in analyzing the selling activities of the corporation.

Conclusions

“Sale” is defined to mean and include any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. (Section 6006, California Revenue and Taxation Code.)

Thus, where a H---'s B--- College asset is transferred to one of I--- schools, and it is set up as a receivable on H---'s books and a payable on I---'s books there is a credit sale. If H---'s B--- Colleges were to make enough of them in any twelve-month period, tax would apply to all of the sales.

In this instance, all of the schools must be considered as one single corporate entity. The various schools are separate departments (like divisions) of the corporation. If each were, in fact, a separate legal entity then only the sales of each entity could be considered in determining whether they were sufficient in number, scope, and character so as to preclude a finding that they were occasional sales and exempt.

In summary, H---'s B--- College is looked upon as a single entity with several accounts. The sales by the entity, through the various accounts, were sufficient in number and character so as to preclude a finding that they were occasional in nature and exempt from sales tax.

As in the case of the I--- schools, if we were able to treat each school as a separate and distinct entity, rather than integral divisions of H---'s B--- College, which is a separate and distinct entity, then by reason of the dates of the sales tax would apply to the Oakland school sales but not the San Diego school sales. The Santa Barbara school sales would only be taxable in 1969 when they were three.

Recommendations

Account SR -- XX-XXXXXX (San Diego); Redetermine, reaudit, and adjust the measure of tax by reducing it to \$305. Make a refund accordingly.

Accounts SR -- XX-XXXXXX (San Diego); Redetermine, reaudit, and adjust the measure of tax by reducing it to \$305. Make a refund accordingly.

Accounts SR -- XX-XXXXXX (Santa Barbara) and SR -- XX-XXXXXX (Oakland); Redetermine without adjustments.

Adjustment to be made by Petitions.

Robert H. Anderson, Hearing Officer

Dec. 18 1972

Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

12-21-72

Date