

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

395.1243

In the Matter of the Petition)	
for Redetermination of State)	DECISION AND RECOMMENDATION
and Local Sales and Use Taxes)	OF HEARING OFFICER
)	
H--- G--- CAR WASH)	Account No. SR -- XX-XXXXXXX-010
)	
<u>Petitioner</u>)	

The above-entitled matter came on regularly for hearing on January 11, 198X, in Santa Ana, California. H. L. Cohen, Hearing Officer.

Appearing for Petitioner: Mr. B--- . F---, Owner
Mr. L--- K---, Attorney
At Law

Appearing for the Board: Mr. W. Monsanto, Supervising Auditor
Santa Ana District

Mr. A. Floria, Auditor
Santa Ana District

PROTEST

Petitioner protests the assertion of tax on the sale of fixtures and equipment sold with a business. Tax was asserted by means of a field billing order covering the month of September 1977. A determination was issued on November 21, 1978. The amount upon which the protested tax was based is \$52,024.

CONTENTION

Petitioner contends that the full amount of tax due has been paid and no further tax is due.

SUMMARY

1. Petitioner is an individual who purchased and is currently operating a car wash business. The business was purchased from R--- H--- and R--- H--- during September 197X.

2. The escrow instruction for the transaction provided that the total selling price was \$XXX,000, and that the buyer would reimburse the seller for sales tax on fixtures and equipment based on a valuation of \$20,000, or as required by the State Board of Equalization. Tax was paid based on this amount. The auditor established from the seller's books that the fixtures and equipment had a depreciated value at the time of the sale of \$80,027. The auditor allowed 10 percent of this value as location value and placed a value for sales tax purposes of \$72,024 on the fixtures and equipment. The billing here protested is for tax on the difference between \$72,024 and the \$20,000 actually reported. Petitioner argues that the equipment was in poor condition and that the book value was highly overstated.

ANALYSIS AND CONCLUSIONS

1. Sales tax is normally based upon the selling price of tangible personal property as agreed upon by the parties. Where there is no specified selling price other evidence, such as book value, market price, or property tax valuation, is examined. Petitioner has not submitted a sales agreement, and the escrow instruction is ambiguous. The clause with respect to sales tax appears to be included primarily for the purpose of stating who is to be liable for the tax. The statement that tax is to be paid on a valuation of \$20,000 or as required by this Board does not clearly establish \$20,000 as the agreed selling price.

2. The usual problem in evaluating fixtures and equipment where a business is sold for a lump-sum price is that the seller wishes to maximize goodwill and minimize tangibles, while the buyer wishes to minimize goodwill and maximize tangibles. The seller's purpose is to be able to treat the maximum amount as capital gains for income tax purposes; the buyer wishes to have a large allocation of depreciable tangibles for income tax purposes. Here petitioner is the buyer and his argument for a lower evaluation for the depreciable assets, while beneficial for sales tax purposes, would not produce the best results for income tax purposes. If petitioner can show from his income tax records that he actually used the claimed \$20,000 price for income tax depreciation purposes, then that value should be accepted. Petitioner should be allowed thirty days to submit these records to the audit staff for verification.

RECOMMENDATION

Allow petitioner thirty days to submit income tax records for verification. Cancel determination if the income tax records support petitioner's contention. Otherwise redetermine without adjustment. Santa Ana District to make adjustment if warranted.

H. L. COHEN, HEARING OFFICER

Feb. 8, 1980

Date