

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

465.2450

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petitions )  
for Redetermination Under the ) DECISION AND RECOMMENDATION  
Sales and Use Tax Law of: )  
)  
[U], INC. ) Nos. SS --- XX-XXXXXXX-010  
) SS --- XX-XXXXXXX-020  
)  
Petitioner \_\_\_\_\_ )

The Appeals conference in the above-referenced matters was held by Senior Staff Counsel Stephen A. Ryan on December 5, 1994 in Oakland, California.

Appearing for Petitioner: Ms. S--- G---  
Mr. D--- T---  
A--- A---

Appearing for the  
Sales and Use Tax Department: Mr. Steve Sisti  
Tax Auditor  
  
Mr. Verne Ferreira  
Supervising Tax Auditor

Protested Item

The protested liability for the combined determination period October 1, 1989 through September 30, 1992 involves only the use tax measured by \$330,501 for the period from October 1, 1989 through June 30, 1990.

Petitioner's Contention

No deficiency for the period from October 1, 1989 through June 30, 1990 is applicable under either Notice Of Determination because a January 14, 1993 Waiver Of Limitation form is invalid. [Mr. T--- informed us at the conference that petitioner no longer disputes any other items.]

Summary

Petitioner was a manufacturer, consumer, seller, and sometimes contractor of wind-driven power generation stations. It has been audited previously by the Board.

On January 14, 1993, the auditor and petitioner's controller, R--- G---, agreed to allow the Board an extension of time through July 31, 1993 to issue Notices of Determination for deficiencies for the period from October 1, 1989 through March 31, 1990 for the Sales And Use Tax Law, the Uniform Local Sales And Use Tax Ordinances, and the Transit District Transactions (Sales) And Use Tax Ordinances. The auditor completed a Board Waiver Of Limitation form, including his signature on behalf of the Board. Mr. G--- signed for "[U], Inc." "FIRM NAME". No entry was made on the line for "Account No.\_\_\_\_".

The Board's Sales And Use Tax Department ("Department") issued a Notice Of Determination to petitioner on July 27, 1993 for the period from October 1, 1989 through June 30, 1990 for an estimated \$25,250.44 use tax plus interest on purchase prices as evidenced in a supporting Field Billing Order. On October 29, 1993, the Department issued another Notice of Determination for the period from July 1, 1990 through September 30, 1992 for a net \$60,488.92 use tax plus interest. This latter notice referred to an alleged July 27, 1993 notice for \$25,351.97 additional tax.

Mr. T--- asserts that the waiver form is invalid because: (1) there is no seller's permit number listed thereon; and (2) the auditor filled in the form.

Analysis and Conclusions

The waiver form and the waiver agreement between petitioner and the Department are valid (see Revenue and Taxation Code section 6488). Petitioner's controller was chosen by petitioner's management to work with the Department regarding the audit. That controller and the auditor agreed to the extension through July 31, 1993 for the Board to issue a Notice of Determination against petitioner for the period from October 1, 1989 through March 31, 1993 for sales, use, local, and transit taxes. Petitioner held only one seller's permit involving such taxes. When these two gentlemen each signed the waiver form filled in by the auditor, they were memorializing that agreement. Petitioner's name was listed on the form as the taxpayer, and Mr. G--- signed on behalf of petitioner in that name. The lack of the duplicate identification of petitioner by seller's permit number is irrelevant. The auditor's courtesy to fill in that form is also irrelevant to support petitioner's argument.

Recommendation

Redetermine without adjustment.

\_\_\_\_\_  
Stephen A. Ryan, Senior Staff Counsel

\_\_\_\_\_  
Date