

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

817.0235

In the Matter of the Petition )  
for Redetermination Under the ) DECISION AND RECOMMENDATION  
BART District Transactions and )  
Use Tax Ordinance of: )  
)  
--- --- ) No. S- -- XX-XXXXXX  
)  
)  
Taxpayer )

The preliminary hearing on the above taxpayer's petition for redetermination was held on December 14, 1981, in San Francisco, California.

Hearing Officer: Warren W. Mangels

Appearing for Petitioner: --- ---

Appearing for the Board: Mr. Bruce A. Wormell

Protested Items

The protested transaction use tax liability determined June 25, 1981 is measured by:

<u>Item</u>	<u>Tax</u>
Purchase of motor vehicle in 1979 outside of the Bay Area Rapid Transit District (BART) determined to be purchased for use, and used, in BART district	\$45.10

Petitioner also objects to a portion of the interest added to the determination which was assessed pursuant to the language of section 6482 of the Revenue and Taxation Code.

Contentions of Petitioner

1. The vehicle was not purchased for use in the BART district.
2. In any event, the statutory provisions upon which the determination is based are unconstitutional.
3. If the use is found taxable, the interest liability should only be based upon a seven percent rate.

Summary of Petition

In July of 1979, petitioner purchased a 1979 fiat automobile in Daly City from --- ---, a motor vehicle dealer located there. Appellant then resided, and continues to reside, in San Francisco, California. Petitioner disclosed his San Francisco address to the vendor.

When auditing the vendor of the vehicle, the field auditor's observed petitioner's residence address in the BART district, and subsequently issued the determination, after first reviewing petitioner's written reasons for objecting to an imposition of the use tax.

Immediately after the purchase of the vehicle, petitioner drove it to San Francisco, a city which is part of the San Francisco Bay Area Rapid Transit District (BART). He apparently garages the vehicle in that district. He commutes on the BART transit system to his place of employment.

Petitioner maintains, that while he does use the vehicle in the BART district on occasion, he principally uses public transportation even for short local trips, such as shopping. He contends that he specifically purchased the vehicle, a convertible, for use outside the district.

He has stated in a letter dated March 25, 1981, "While I do not dispute that I have used the item in a transit district area, I certainly did not purchase the auto for such use. I purchased it for use outside of the area, where such an excellent public transit system as we have in the BART district does not exist. While in the district I largely use public transportation, e.g. commuting to work daily and shopping. It is when I leave the area that I need and use the car the most, for trips to Yosemite, Lake Tahoe, and other locales near enough to drive to where an auto is handy and flying is not quite worth it."

Thus, he asserts that he did not purchase the vehicle for use in the BART district, even though he uses it in there. Based upon his conclusion that he did not buy the vehicle for use in the BART district, he then urges that he is not subject to the use tax because of the very language of the applicable statute. (See sections 7262 and 6201 of the Revenue and Taxation Code.)

He also contends that the statute is unconstitutional, in that it denies him due process, is unconstitutionally vague, and denies him equal protection of the law. He claims it is overly broad and consequently arbitrarily enforced, resulting in a denial of equal protection. He stresses the vagueness of the word "intent." He maintains that he is denied equal protection by the very method he was singled out, specifically on the basis of his San Francisco address. He points out that persons with an address outside the district often purchase vehicles specifically to commute in the BART district, and for other use there, but in practice are not subject to the BART use tax. He believes it is too costly for the state to evaluate intent on a case by case basis; thus arbitrary enforcement results.

Petitioner chose not to submit a calendar of place of storage and use of the vehicle with respect to the six months after the entry of the vehicle into the BART district. He has elected to rely upon his contention that he did not purchase the vehicle for use in the BART district, within the meaning of the law, and his assertions of unconstitutionality.

He also cites portions of Article XV of the California Constitution in urging that any applicable interest should be limited to seven percent, rather than the twelve percent imposed pursuant to the language of section 6482.

### Analysis and Conclusions

The issue, therefore, is whether the vehicle was purchased for use in the district within the meaning of the ordinance, and, if so, whether interest (in excess of a seven percent rate) should apply.

Section 7262 of the Revenue and Taxation Code provides, in pertinent part, that:

“The use tax portion of any transactions and use tax ordinance adopted under this part shall impose a complementary tax upon the storage, use or other consumption in the district of tangible personal property purchased from any retailer for storage, use or other consumption in the district. Such tax shall be at a rate of one-half of 1 percent of the sales price of the property whose storage, use or other consumption is subject to the tax, and the ordinance shall include provisions in substance as follows:

(a) Provisions identical to those contained in Part 1 (commencing with Section 6001) of this division, insofar as they relate to use taxes and are not inconsistent with this part, except that the name of the district as the taxing agency shall be substituted for that of the state.”

Section 6201 of the Revenue and Taxation Code provides, in pertinent part, for the tax to be imposed on the storage, use, or other consumption in this state (and thus in the district) of tangible personal property purchased for storage, use or other consumption in the state (and consequently district).

It is settled by judicial decisions and administrative interpretation, that property is purchased for use in a particular area if it is purchased for some use in that area as needs require, if the principal storage and use thereof thereafter occurs in the area in question. (See Chicago Bridge Co. v. Johnson, 19 Cal.2d 162 [1941]; see also section (b)(3) of Sales and Use Tax Regulation 1620.)

It is also well settled that it is the taxpayer who bears the burden of proving that the determination is erroneous. (See People v. Schwartz, 31 Cal.2d 59 [1947]). Clearly, petitioner has not met the burden of establishing that the principal storage or use has occurred outside the BART district.

Moreover, with respect to petitioner's assertion that the language of sections 7262 and 6201 is unconstitutional, section 3.5 of Article III of the California Constitution precludes our determining that such statutory provisions are unconstitutional or unenforceable. (See also Chicago Bridge & Iron Co. v. Johnson, supra.)

Furthermore, the applicable statutory language determining the rate of interest to be used here is set forth in section 6482. We find that the provisions of Article XV of the State Constitution referred to are not applicable to reduce the interest rate set forth in section 6482. We conclude that the reference to the rate of interest upon "the...forbearance of any money...or on accounts after demand" does not relate to the rate of interest on a statutory tax determination. In addition, we are not concerned here with the rate of interest upon a judgment rendered in a court.

Recommendation

Redetermine without adjustment.

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Warren W. Mangels Hearing Officer

4-27-82

\_\_\_\_\_  
Date