

7/6/77

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**330.2350**

In the Matter of the Petition  
for Redetermination Under the  
Sales and Use Tax Law )  
)  
)  
C--- - D--- SYSTEMS, INC. )  
)  
)  
Petitioner )

DECISION AND RECOMMENDATION  
OF HEARING OFFICER

Account No. SR -- XX-XXXXXX

This matter came on regularly for hearing in Los Angeles, California on June 8, 19XX, before W. E. Burkett, Hearing Officer.

Appearances

For the Taxpayer:

Mr. R. J. T---, resident

Mr. A--- Y---, Bookkeeper

For the Board:

Mr. Jan K. Ishii, District Principal Auditor

Mr. Peter R. Elack, Auditor

Protested Items

(Period 10-1-72 to 6-30-76)

- |    |   |          |
|----|---|----------|
| 1. | Taxable rental receipts not reported.                       | \$65,657 |
| 2. | Ten percent penalty assessed for negligence<br>in reporting | \$ 543   |

Contentions of Taxpayer

- No consideration should be attributed to the property since it was provided as an accommodation with exempt film rentals.
- This penalty should not have been applied in any event because we acted upon reporting advice obtained from a representative of the Board of Equalization.

### Summary of Petition

The taxpayer is a corporation engaged in providing motion picture films and equipment for use by customers (chiefly restaurants and pizza parlors).

The protested measure of tax consists of the apportioned rentals attributed to a motion picture projector and related equipment which the taxpayer provided for use by customers as part of a complete price package.

The taxpayer licensed the film for use from the distributor thereof. It also provided the customer with the use of a specially designed motion picture projector and the accessory equipment which it acquired without payment of tax from various sources.

The taxpayer's representative contends that it only rents the film and that the projector and accessory equipment was provided as a convenience to the customer. Its representative pointed out that the customer was formerly provided with the use of projectors acquired tax paid from various sources. However, these projectors were inefficient in that their use resulted in excessive wear on the film. The taxpayer has specially designed and patented a new type of projector which permits long-life use of the film. The firm is currently licensing distributors and making volume sales of the projector units.

The taxpayer also protests the application of the 10 percent negligence penalty determined for negligence in reporting. It appears that the taxpayer sought oral assistance from a board office in reporting its sales and use tax liability. However, at the time the advice was given it was utilizing projectors acquired tax paid and leased in the same form as acquired. This is the taxpayer's first audit examination.

### Analysis and Conclusions

It is our conclusion that the taxpayer was properly classified as the lessor of the property and is subject to tax measured by the fairly apportioned rental value of the projector and related equipment. The principal elements of a hiring of personal property are the transfer of possession to the hirer so that the hirer controls and uses the subject property (Cal.Civil Code Sections 1925; also see Culligan Water Conditioning v. State Board of Equalization, 17 Cal.3d 86). These elements are present in this petitioned matter. It is not reasonable to conclude that the taxpayer was providing the equipment without charge when the invested cost of the property amounted to approximately 77 percent of the total unit. Nor does this accord with the terms of the parties' contract, which expressly requires the furnishing of the equipment.

The rental of the equipment is subject to classification as a taxable rental sale because the taxpayer failed to make a timely payment of sales tax reimbursement or use tax on the full purchase price of the property, and for the additional reason that the property was not leased in

substantially the same form as acquired (Revenue and Taxation Code section 6006(g)(5); Sales and Use Taxes Regulation 1660).

The information provided to the taxpayer by the board's representative appears to have been correct because at the time he was leasing projectors acquired tax paid and leased in the same form as acquired. On the other hand it is our conclusion that the failure to note the new tax consequences resulting from the change in the method of acquiring the leased projectors was reasonable in the attendant circumstances. Accordingly, we conclude that the ten percent negligence penalty should be deleted from the amount proposed for redetermination.

Recommendation

The ten percent penalty should be deleted from the amount proposed for redetermination.

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W. E. BURKETT, HEARING OFFICER

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6-24-77  
Date