

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

In the Matter of the petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	OF HEARING OFFICER
)	
)	
<u>Petitioner</u>)	

This matter came on regularly for hearing in Bakersfield, California, on January 14, 1975.

Appearing for the taxpayer was REDACTED TEXT Messrs. Allen, Carter and Decker appeared for the board.

Protested Item

(period 7/1/70 to 10/31/72)

Item B of audit report – taxable measure erroneously eliminated from reported sales as exempt transportation charges.

REDACTED TEXT

Contentions of Taxpayer

Transportation charges in question are exempt under the provisions of Regulation 1628, although the separately stated charges in question are not labeled as “transportation charges” on the invoice.

Summary of Petition

During the period in question taxpayer was an individual engaged in operating a rock, sand and gravel sales business.

The questioned transactions emanate from a standing purchase order issued by REDACTED TEXT (hereinafter REDACTED TEXT), which provides in part:

“This is a standing purchase order, subject to terms and conditions stipulated on attached ‘Standing Order Instructions’, dated REDACTED TEXT.”

The standing order instructions referred to therein provide in relevant part:

“Sales – Use Tax. To insure tax exemption under California Sales Tax Ruling 58, Code 2028, where passage of title has a direct bearing on property sold for a

delivered price, the following clause shall be considered as part of this standing order:

“It is understood and agreed that little passes to buyer at shipping point. Seller to set out freight and deduct before computing sales or use tax.”

In relevant part a typical taxpayer’s invoice to REDACTED TEXT provides:

“REDACTED TEXT

41.54 Tons 1½” Rock – @ \$4.00 per ton.	\$166.16
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Sales tax	\$7.27
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TOTAL	\$173.43
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[\$20.77 excluded from sales tax base.]”

At the preliminary hearing REDACTED TEXT stated that only REDACTED TEXT invoices were different. Invoices to other customers were complete, in that they identified the separately stated transportation charges as such, and that the defect in the REDACTED TEXT invoices was due to clerical error. It was also stated that REDACTED TEXT paid on the basis of the invoices which was in conformity with the provisions on the standing order.

Analysis and Conclusion

The provisions of Regulation 1628 provide in part:

“Transportation charges will be regarded as ‘separately stated’ only if they are separately set forth in the contract for sale or in a document reflecting that contract, issues contemporaneously with the sale, such as the retailer’s invoice. That fact that the transportation charges can be computer from the information contained on the face of the invoice or other document will not suffice as a separate statement. If a separately stated charge is made designated ‘postage and handling’ only that portion of the charge which represents actual postage may be excluded from the measure of tax.

“(b) TRANSPORTATION BY RETAILER’S FACILITIES OR PROPERTY SOLD FOR DELIVERED PRICE

* * *

“(2) IN GENERAL. When transportation is by facilities of the retailer or the property is sold for a delivered price, tax applies to charges for transportation to the purchaser, unless (a) the transportation charges are separately stated, (b) are for transportation from the retailer’s place of business or other point from which shipment is made directly to the purchaser, and (c) the transportation occurs after the sale of the property is made to the purchaser. When the sale occurs before the

transportation to the purchaser commences, the tax does not apply to separately state charges for the transportation. The amount that may be excluded from the measure of the tax cannot exceed a reasonable charge for transportation by facilities of the retailer or the cost of transportation by other than facilities of the retailer.

It will be noted that the regulation merely requires that the amount of transportation charges be separately stated. It does not require that it be labeled as such on the invoice.

In the hearing officer's opinion, the contract between the taxpayer and REDACTED TEXT clearly provides that title to the property in question passes to REDACTED TEXT at the point of shipment, and required that the transportation charges be set out and deducted before sales or use tax is computed. All of this was done. The hearing officer finds that the standing order, which includes the standing order instructions and the invoice must all be read together. If this is done, then the provisions of Regulation 1628, insofar as separate statement of transportation charges is concerned is complied with.

Therefore, it is concluded that the transportation charges in this case are not taxable.

Recommendation

Delete the protested item from the determination. Redetermine tax in reduced amount.

Jack D. Paulson, Hearing Officer

17 March 1975
Date