

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

115.0060

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)
)
C--- T---) No. SY -- XX-XXXXXXX-010
SALES, INC.)
)
Petitioner _____)

The Appeals conference in the above-referenced matter was held by Staff Counsel Sharon Jarvis on August 3, 1993 in Arcadia, California.

Appearing for Petitioner:

Mr. W--- A. G---
Attorney

Mr. J--- C. R---
Chief Financial Officer

Appearing for the
Sales and Use Tax Department:

Mr. Williard L. Smith
Supervising Tax Auditor

Ms. Irene Tse
Senior Tax Auditor

Protested Items

The protested tax liability for the period April 1, 1988 through June 30, 1991 is measured by:

<u>Item</u>	<u>State, Local and County</u>
B. Disallowed claimed exempt sales	\$139,271 ¹
C. Ex-tax purchases of camera-ready artwork from Jockey Club not reported	\$122,817

¹ Only \$40,171 of this amount is disputed.

D. Ex-tax purchases of expense items
not reported \$ 45,578²

Petitioner's Contentions

1. Since the sale of a group of horses was to a buyer who already owned a one third interest in the horses prior to the sale, the taxable measure should be two thirds of the sale price.

2. Purchases of certain camera-ready pages were exempt as composed type.

Summary

Petitioner C--- T-- Sales, Inc. (CTS) is an auctioneer of thoroughbred horses. CTS is a wholly owned subsidiary of C--- T--- B--- A---. This petition for redetermination is related to the petition for redetermination and claim for refund of C--- T--- B--- A---, account number SR -- XX-XXXXXX.

The sale in dispute involves the sale of several horses as a group. They were purchased by a Mr. B--- A---. The prior owner of the horses was a partnership in which Mr. A--- had a one-third interest. Petitioner asserts, therefore, that tax was only owed on two-thirds of the sale price.

Also in dispute is whether a logo which appears on certain pages of petitioner's sales catalogues is subject to use tax as artwork or is exempt as composed type. The logo depicts a running horse superimposed on an outline of the state of California. (See Exhibit A for sample of logo.) The logo appears on certain camera-ready pages purchased by petitioner from J--- C--- in Kentucky for the printing of the sales catalogues in California.

The logo indicates to a reader that the horse is officially registered as a California-bred thoroughbred and thereby is eligible for certain bonuses based upon performance. Petitioner asserts that the logo is not artwork. Petitioner argues that artwork usually involves some kind of extra service, whereas this logo is generated by pushing a computer button as the page is generated, and comes out as composed type. Petitioner also argues that the logo is not really artwork within the ordinary meaning of that word, but merely a symbol which is shorthand for what it would take a sentence or two to explain.

² Only \$36,156 of this amount is disputed.

Petitioner also points to Sales and Use Tax Annotations 430.0365 and 430.0410³.

Analysis and Conclusions

Contention 1:

“Persons engaged in the business of making retail sales at auction of tangible personal property owned by such persons or others are retailers, and are, therefore, required to hold seller’s permits and pay tax measured by the gross receipts from such sales.

“.....

“Sales tax does not apply, however, when an owner of property delivers it to an auctioneer for auction and bids in his own property at the auction.” (Sales and Use Tax Regulation 1565⁴.

Petitioner argues that the last sentence of the regulation creates an exception to the payment of sales tax when the buyer buys back his own property at auction, and that this transaction falls within the exception as to one third of the sale price of the group of horses.

Property acquired by a partnership is partnership property. (Corporations Code section 15008.) A partner is a co-owner with the other owners of specific partnership property, and has an equal right with the other partners to possess the property for partnership purposes only, unless otherwise agreed. (Corporations Code section 15025.) “A partner’s right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.” (Corporations Code section 15025(2)(b).) The partnership owned the group of horses which were sold at auction, and assigned the right to sell them to the auctioneer, CTS. An individual purchased assets which had previously belonged to the partnership. There was a change in ownership, and sales tax is owed on the entire sales price.

Contention 2: Regulation 1541 states that generally tax applies to charges for printing. Under subsection (f)(1) composed type is excluded:

³All further references to annotations are to the Sales and Use Tax Annotations.

⁴All further references to regulations are to the Sales and Use Tax Regulations.

“The composition of type, whether type text or display type, is the performance of a service, and tax does not apply to charges for such service unless the service is a part of the sale of printed matter in which case tax applies to the gross receipts from the sale of the printed matter without any deduction for typography.”

Under subsection (f)(5) a transfer of type matter combined with artwork is taxable:

“A transfer of type matter combined with artwork, in the form of a paste-up, mechanical, assembly, or camera-ready copy, or of a flat..., or the transfer of a photoreproduction...of such properties is subject to tax without any deduction on account of the cost or expense of typography.”

The Webster’s New World Dictionary defines “artwork” as a work or works of art; also as “pictorial and decorative material accompanying the text in a newspaper, magazine, or advertising layout” (Webster’s New World Dict. (3d college ed. 1988) p. 78.). The logo is not a work of art designed to adorn the camera-ready pages purchased by petitioner. It is a copy of a symbol recognized by thoroughbred followers to indicate that a thoroughbred is officially California-bred registered. However, in applying the regulation I am also guided by a review of the Sales and Use Tax Annotations. Annotation 430.0365 is on point, and compels me to conclude that the California-bred logo is artwork within the meaning of Regulation 1541(f)(5). That annotation specifically addresses composed type and logotypes, which is in essence what concerns us here. In pertinent part the annotation reads:

“Composed type together with hand lettering, line borders of fancy, curved, etc. lines, when such lines are hand-drawn, and/or tradenames, trademarks, etc., when such are precomposed on type/logotype is not `composed type only’. A logotype is a piece of type that carries one or more words, such as the name of a firm or a product.”

Although the logo in issue is computer generated, it is the 1990’s equivalent to the logotype referred to in the annotation and not merely a letter, number, % or \$ sign as petitioner argues. It is also not merely a series of lines as the UPC symbol referred to in Annotation 430.0410 is.

In conclusion, I note that this annotation was written in 1974 when computer technology was far more primitive than it is today. Were the issue to be addressed for the first time today a different annotation might result. However, the annotation has been published and relied upon by both taxpayers and Board staff for many years. Any change to the annotation, and thereby to the interpretation of the regulation, is more appropriately a decision to be made by the Board on a prospective basis.

C--- T--- SALES, INC.
SY -- XX-XXXXXXX-010

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January 7, 1994
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Recommendation

It is recommended that the petition for redetermination be denied, and that the determination be redetermined without adjustment.

Sharon Jarvis, Staff Counsel

Date

Attached: Exhibit A.