



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 920-7445

December 20, 1991

G--- F--- and I--- F---
XXXX --- --- Avenue
--- ---, CA XXXXX

Dear Sirs:

Re: SY -- XX XXXXXX-010
F--- A--- V--- M---

Enclosed is a copy of the Decision and Recommendation pertaining to the petition for redetermination in the above-referenced matter.

I have recommended that the determination be redetermined without adjustment as explained in the Decision and Recommendation.

There are three options available to you at this point.

1. If, after reading the Hearing Decision and Recommendation, you believe that you have new evidence and/or contentions, you should file a Request for Reconsideration. No special form is required to file the Request for Reconsideration, but it must be filed within 30 days from the date of this letter and clearly set forth any new contentions. If new evidence is the basis for filing the request, the evidence must be included. Direct any such request directly to me, with a copy sent to the State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0001, Attn: Principal Tax Auditor. I will subsequently notify you whether the request has been taken under review or whether the request is insufficient to warrant an adjustment. If I conclude that no adjustment is warranted, I will then notify you of the procedure you can follow to request an oral hearing before the Board.

2. If, after reading the Hearing Decision and Recommendation, you find that there is no basis for filing a Request for Reconsideration, but nevertheless desire to have an oral hearing before the Board, a written request must be filed within 30 days with Ms. Janice Masterton, Assistant to the Executive Director, Board of Equalization, P.O. Box 942879, Sacramento, CA 94278-0001.

3. If neither a request for Board Hearing nor a Request for Reconsideration is received within thirty (30) days from the date of this letter, the Hearing Decision and Recommendation will be presented to the Board for final consideration and action.

Very truly yours,

H. L. Cohen
Senior Staff Counsel

HLC:ct
Enc.

cc: Ms. Janice Masterton
assistant to the Executive Director (w/enclosure)

Mr. Glenn Bystrom
Principal Tax Auditor (file attached)

Van Nuys – District Administrator (w/enclosure)

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

295.2000

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)
)
G--- AND I--- F---,) No. SY --C XX XXXXXX-010
A PARTNERSHIP)
dba F--- A--- V--- M---)
)
Petitioner)

The above-referenced matter came on regularly for hearing before Senior Staff Counsel H. L. Cohen on September 25, 1991, in Van Nuys, California.

Appearing for Petitioner:

Mr. I--- F---, Partner

Mr. G. S---, Consultant

Appearing for the Sales and
Use Tax Department

Mr. G. McNamee
Supervising Tax Auditor
Van Nuys District

Mr. G. Weishaup
Senior Tax Auditor
Van Nuys District

Protested Items

The protested tax liability for the period April 1, 1987 through March 31, 1990 is measured by:

<u>Item</u>	<u>State, Local and County</u>
A. Surcharges on Credit Card Sales	\$169,842

B.	Claimed Installation Charges Disallowed	903,206
C.	Claimed Sales of Resale Disallowed	778,329
D.	Computation Error	<u>- 3,200</u>
	TOTAL	\$1,848,177

Contentions

Petitioner contends that:

1. The credit card surcharge is in the nature of an interest charge and is thus not taxable.
2. At least some of the charges for labor are for installation and are thus not subject to tax.
3. Additional records are available to support claims for resale.
4. No satisfactory explanation has been given for the computation error.

Summary

Petitioner is a partnership which operates three stores selling electronic equipment and accessories. It began in business January 1, 1987. There has been no prior audit.

The auditor noted that on credit card sales petitioner made a surcharge to customer of two percent of the price of the merchandise. No sales tax reimbursement was charged on the two percent surcharge and no tax was reported. The auditor examined petitioner's July 1989 sales in detail and found that the total surcharge was \$3,946. Total taxable sales reported for the month were \$355,049. The unreported surcharges were thus 1.111 percent of recorded taxable sales. This percentage was applied to total reported taxable sales to arrive at the amount subject to tax (Audit item A).

At the hearing, Mr. I--- F--- stated that his brother, G--- F---, handled bookkeeping and tax matters while he handled sales. The records were given to an accountant who I--- F--- has been unable to locate. I--- F--- suggested that the surcharge may not have been in effect during the entire audit period. However, he has no records to verify this.

The auditor noted that in June 1989, claimed exempt labor charges increased significantly. From April 1, 1987 through June 30, 1989, claimed exempt labor charges varied from \$969 to \$37,344 per quarter. For the last three quarters of the audit period, the claimed exempt labor charges ranged from \$194,238 to \$420,784 per quarter. As a percentage of total sales, the range for the earlier period was from 0.155 percent to 2.598 percent. For the later period, the range from from 9.991 percent to 14.083 percent. The auditor's test of installation labor revealed that the majority of the increased deductions were actually sales of installed tangible personal property. The auditor conducted a test of June and July 1989 and concluded that 92.4333 percent of the labor deductions were taxable. This percentage was applied to labor deductions from June 1989 to the end of the audit period (Audit Item B).

At the hearing, petitioner made no comments with respect to this item.

The auditor examined petitioner's records of claimed sales for resale for June and July 1989 and for October 1987. No supporting documentation was on file for some of these sales. In addition, there was a substantively greater amount claimed in periods prior to and including the fourth quarter of 1987. The auditor calculated an error factor from the October 1987 sample and applied it to sales for the fourth quarter 1987 and prior periods. Another error factor was calculated for the June and July 1989 period and this factor was applied to the remainder of the audit period (Audit Item C).

Petitioner made no comment with respect to this item at the hearing.

The auditor also found a small overpayment on one of petitioner's returns and allowed a credit for it (Audit Item D).

Although petitioner had included this item in its petition, petitioner made no comment with respect to it at the hearing.

I--- F--- requested that he be allowed 30 days in which to obtain records to justify reduction in the amount subject to tax. As of November 14, nothing had been received from petitioner.

Analysis and Conclusions

Section 6012 of the Revenue and Taxation Code defines "gross receipts", which is the amount subject to the sales tax, to mean the total amount of the sale. No deduction is allowed for the cost of labor or service or interest paid. Sales and Use Tax Regulation 1641 provides in subdivision (a):

“If tangible personal property is sold on credit, either under a security agreement, or otherwise the whole amount of the contract is taxable, unless the retailer keeps adequate and complete records to show separately the sales price of the tangible personal property, and the insurance, interest, finance, and carrying charges made in the contract. If such records are kept by the retailer, the insurance, interest, finance and carrying charges may be excluded from the computation of the tax.”

The surcharge is not an interest charge because it is a flat amount unrelated to the length of time taken by the buyer in which to pay for the goods. It is a charge made by petitioner to reimburse itself for the cost of dealing with the issuer of the credit card. It is a cost of doing business and is therefore part of gross receipts, just as a salesperson’s commission or salary is. The only difference is that the commission or salary is included in the posted price.

Petitioner has produced no evidence that would indicate that the practice of making a surcharge for credit sales was not in effect throughout the audit period. I conclude that the tax was properly applied to Audit Item A.

Section 6012 excludes charges for installation from gross receipts subject to tax. Section 6091 provides that it shall be presumed that all gross receipts are subject to tax until the contrary is established. Petitioner has submitted no evidence to show that the disputed charges were in fact charges for installation labor. The statistical evidence submitted by the auditor is extremely convincing as to a change in petitioner’s method of reporting taxable charges. The auditor’s position should be upheld on Audit Item B.

Section 6091 provides that it is the burden of the seller to show that a sale is not at retail unless the seller takes a resale certificate from the buyer. The transactions in question in Audit Item C are unsupported by resale certificates. Petitioner has produced no evidence to show that the property was in fact resold. Accordingly, tax was properly imposed in Audit Item C.

Audit Item D is a credit item. I see no basis for changing it.

Recommendation

Redetermine without change.

H. L. Cohen, Senior Staff Counsel

11-14-91
Date