

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

325.0018

APPEALS UNIT

In the Matter of the Petition)
for Redetermination Under the) HEARING
Sales and Use Tax Law of:) DECISION AND RECOMMENDATION
)
L--- CORP.) No. SZ -- XX XXXXXX-040
)
Petitioner)

The above-referenced matter came on regularly for hearing before Hearing Officer H. L. Cohen on September 26, 1990 in Sacramento, California.

Appearing for Petitioner: No appearance

Appearing for the Department
Of Business Taxes: Mr. Grant Elliot
Senior Tax Auditor
Out-of-State District

Protested Item

The protested tax liability for the period January 1, 1984 through December 31, 1986 is measured by:

<u>Item</u>	<u>State, Local County & LACT</u>	<u>Transit District</u>
D. Self-consumed fixed assets purchased ex-tax	\$1,631,709	\$934,789

Contention

Petitioner contends that the machinery in question was used substantially outside California before it was brought into the state.

Summary

Petitioner is a corporation engaged in the manufacture and sale of plastic film products, plastic containers, and packaging machinery. The last prior audit was for the period through December 31, 1983.

The auditor notes that petitioner has manufacturing plants in several states. Much of the machinery used in these plants is first constructed or assembled at petitioner's Ohio plants. In 1984, petitioner purchased components for a blow-molding machine and an associated trimmer machine, which were assembled by petitioner's personnel in Ohio at facilities leased from W--- I---, Inc. Later, the machines were disassembled for shipment to petitioner's --- ---, California plant. Shipment was on or about January 5, 1985.

Petitioner prepared capital expenditure requests for all capital asset projects. This form includes a description of the property, location of intended use, and approvals by authorized personnel. The request for this project indicated that from inception of the project, petitioner intended to use the machines in California.

Petitioner contends that the machinery in question was used outside California for more than 90 days prior to shipment to California and should thus be presumed to have been purchased for use outside California. Petitioner submitted a letter from the lessor of the Ohio facility at which the machinery was assembled. The letter states that the blow-molding machine was installed and ran from August 1984 to December 1984. No mention is made in the letter of a trimmer machine.

The auditor points out that some of this time would have been required for assembling, test, and disassembling. The invoices for wiring and piping indicate that the hookup was not complete until the middle or end of September. The auditor requested petitioner to provide evidence as to the extent of use of the machine and actual production in Ohio. No such evidence was provided.

Analysis and Conclusions

Section 6201 of the Revenue and Taxation Code imposes the use tax on the storage, use or other consumption in this state of tangible personal property purchased from a retailer for the purpose of such storage, use or other consumption in this state. The machinery here was used in California. It is tangible personal property. It was purchased from a retailer. The sole remaining question is whether it was purchased with the intention of using it in California. The capital expenditure request indicates that the initial intent of petitioner was to build the machine for use in California. Petitioner could, of course, change his mind prior to completion of the fabrication of the machines. Sales and Use Tax Regulation 1620 provides, in subdivision (b)(3):

“Property purchased outside of California which is brought into California is regarded as having been purchased for use in this state if the first functional use of the property is in California. When the property is first functionally used outside of California, the property will nevertheless be presumed to have been purchased for use in this state if it is brought into California within 90 days after its purchase, unless the property is used or stored outside of California one-half or more of the time immediately following its entry into this state. Prior out-of-state use not exceeding 90 days from the date of purchase to the date of entry into California is of a temporary nature and is not proof of an intent that the property was purchased for use elsewhere. Prior out-of-state use in excess of 90 days from the date of purchase to the date of entry into California, exclusive of any time of shipment to California, or time of storage for shipment to California, will be accepted as proof of an intent that the property was not purchased for use in California.

“For purposes of this subparagraph, ‘functional use’ means use for the purposes for which the property was designed.”

Only functional use outside the state is counted in establishing out-of-state use. Time for assembly, disassembly, testing, preparation for shipment, and shipment do not count. The evidence here is not sufficient to establish actual functional use outside California for 90 days or any other period of time prior to the arrival of the machines in California. Accordingly, I conclude that the auditor was correct in applying the use tax here.

Recommendation

Redetermine without adjustment.

Herb L. Cohen, Hearing Officer

11/6/90

Date