

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

325.0928

APPEALS UNIT

In the Matter of the Petition)
for Redetermination Under the) HEARING
Sales and Use Tax Law of:) DECISION AND RECOMMENDATION
)
T--- E--- MANUFACTURING) No. SR -- XX XXXXXX-010
dba E--- MANUFACTURING)
)
Petitioner)

The above-referenced matter came on regularly for hearing before Hearing Officer Darrell B. Furnish on June 27, 1989, in Bakersfield, California.

Appearing for Petitioner: Mr. R--- E---
Vice-President

Appearing for the Department
Of Business Taxes Mr. S. B. Stallings, Jr.
Supervising Tax Auditor

Ms. Claudia Marsh
Associate Tax Auditor

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 and County</u>
Sales in interstate commerce disallowed.	\$32,750

Petitioner's Contentions

1. Delivery of equipment in California for subsequent shipment outside the state did not constitute a taxable transaction.

2. Alternatively, petitioner should be credited with the amount of Washington State use tax which the purchaser paid on the transaction.

Summary

Petitioner, a corporation, manufactures and sells agricultural processing equipment. The company began operations in June, 1983. There were no previous audits.

In October 1986 petitioner contracted orally with D--- M--- Corporation to manufacture an asparagus sizing machine for use at D--- M---'s facility in ---, Washington. D--- M--- later requested petitioner to send its manufacturing drawings for the machine to G--- D--- Corporation in --- ---, California for the purpose of allowing G--- D--- to match the size with a machine it was manufacturing to be used by D--- M--- in conjunction with petitioner's machine. Mr. E--- stated that he suggested to D--- M--- that the machine could be dropped off at G--- D---'s location in [California] for precise matching of the two machines, as an alternative to sending the drawings. D--- M--- was agreeable to this arrangement and issued a purchase order which called for shipment of the machine to [California].

G--- D--- subsequently completed manufacture of its machine and shipped both units by common carrier to D--- M--- in ---, Washington.

The audit staff asserted sales tax on the selling price of petitioner's machine, contending it was delivered in this state to an agent of the purchaser. The staff further contends that shipment outside the state was not pursuant to terms of the contract, since the written purchaser order called for shipment to [California].

Mr. E--- stated he had been told by D--- M--- that they had paid Washington State use tax on the transaction. He said his company will not be reimbursed by D--- M--- for California sales tax because D--- M--- has already paid the tax to Washington.

Analysis and Conclusions

1. Sales and Use Tax Regulation 1620(a)(3) provides as follows:

(3) SALES PRECEDING MOVEMENT OF GOODS FROM WITHIN STATE TO POINTS OUTSIDE STATE.

(A) To Other State - - When Sales Tax Applies. Except as otherwise provided in (B) below, sales tax applies when the property is delivered to the purchaser or the purchaser's representative in this state, whether or not the disclosed or undisclosed intention of the purchaser is to transport the property to a point outside this state, and whether or not the property is actually so transported. It is immaterial that the contract of sale may have called for the shipment by the retailer of the property to a point outside this state, or that the property was made to specifications for out-of-state jobs, that prices were quoted including transportation charges to out-of-state points, or that the goods are delivered to the purchaser in this state via a route a portion of which is outside this state. Regardless of the documentary evidence held by the retailer...to show delivery of

the property was made to a carrier for shipment to a point outside the state, tax will apply if the property is diverted in transit to the purchaser or his representative in this state, or for any other reason it is not delivered outside this state.

(B) Shipments Outside the State - - When Sales Tax Does Not Apply. Sales tax does not apply when the property pursuant to the contract of sale, is required to be shipped and is shipped to a point outside this state by the retailer, by means of:

1. Facilities operated by the retailer, or
2. Delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point. As used herein the term "carrier" means a person or firm regularly engaged in the business of transporting for compensation tangible personal property owned by other persons and includes both common and contract carriers. The term "forwarding agent" means a person or firm regularly engaged in the business of preparing property for shipment or arranging for its shipment. An individual or firm not otherwise so engaged does not become a "carrier" or "forwarding agent" within the meaning of this regulation simply by being designated by a purchaser to receive and ship goods to a point outside this state. (this subsection is effective on and after September 19, 1970, with respect to deliveries in California to carriers, etc., hired by the purchasers for shipment to points outside this state that are not in another state or foreign country, e.g., to points in the Pacific Ocean.)

Regulation 1620(a)(3)(B), quoted above, implements the exemption from sales tax for interstate shipments provided by Section 6396 of the Revenue and Taxation Code. Like similar provisions of the Sales and Use Tax Law, Section 6396 is designed to accommodate federal constitutional restrictions on state taxation of sales in interstate commerce. If delivery occurs in California the transaction constitutionally may be taxed, regardless of any intent to subsequently ship the goods out of state. (Satco Inc. v. State Board of Equalization (1983) 144 Cal.App.3d 12, 16; Engs Motor Truck Co. v. State Board of Equalization (1987) 189 Cal.App.3d 1458).

Section 6396 restricts the exemption for interstate shipments to those instances in which, pursuant to the contract of sale, shipment is made outside this state by the retailer by means of facilities operated by the retailer or by delivery to a carrier, customs broker or forwarding agent for shipment out of state. In this instance, petitioner delivered the property to a carrier for shipment to --- ---, California as evidenced by a C--- Freight Lines bill of lading showing the consignee as "G--- D--- Corp., XXXX --- Drive, --- ---, California XXXXX". The Revenue and Taxation Code provides no exemption for this transaction even though it is undisputed that the property was subsequently shipped by G--- D--- to Washington.

There is also no provision by which petitioner's sales tax liability may be offset against use tax paid by the buyer to another state. Section 6406 provides for a credit against a California purchaser's use tax liability for sales or use tax paid to another taxing jurisdiction. That is the opposite side of the coin to this situation, however. The relief petitioner seeks simply cannot be granted.

Recommendation

Redetermine without adjustment

Darrell B. Furnish, Hearing Officer

9-13-89

Date