

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

330.3225

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law) OF HEARING OFFICER
)
G--- L---, INC.) Account No. S- -- XX XXXXXX
)
)
)
Petitioner)

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

Appearing for the taxpayer were Mr. N--- D---, controller and Mr. D--- R. F---, attorney. Messrs. Anderson and Carter appeared for the Board.

Protested Item
(Period 7/1/69 to 6/30/72)

Charges for repairs of rental equipment
resulting from abuse or improper use of
equipment rented omitted from reported
taxable rental receipts. \$32,874

Contentions of Taxpayer

Charge for repairs of rental equipment resulting from abuse of equipment is not gross receipts from the lease of tangible personal property, but instead is a charge for damages measured by the cost to restore the equipment to its condition before the damage.

Summary of Petition

Taxpayer is a corporation engaged in business as a forklift truck dealer. It sells new and used lift trucks and maintains a service and parts department. The taxpayer also operates a substantial rental business leasing lift trucks on short term and long term bases.

Under the rental terms and conditions relating to the hire of equipment, the lessee agrees to pay for all damages to the equipment resulting from improper use or abuse of the equipment upon receipt of invoices therefor from the lessor or lessor, which are based on the lessor's cost and extent of repairs. Under the same terms and conditions, the lessor agrees to service and maintain the equipment in proper working condition and the lessee agrees to make it available for service by the lessor at reasonable times during the lessor's business hours. The amount in issue represents the receipts from invoicing lessees for cost and expense of repairing equipment necessitated by improper use or abuse. It does not include normal maintenance costs.

At the hearing the taxpayer stated that the billing would be for such things as the repairing of a head light which had been knocked off; an engine blown up; or collision damage. All of the equipment in question was being leased in such a manner that rental receipts were taxable. The taxpayer reported and paid the amount of the determination measured by the taxpayer's cost on the parts actually used in the repair operations. Where the labor was sublet, the taxpayer did not report and pay tax.

When the repair work is performed a separate billing is made which segregates thereon the actual costs of part used.

Analysis and Conclusions

It is the taxpayer's contention that damages to the equipment were outside the purpose and intent for the rental of the equipment and are not included as part of the rental agreement, except insofar as a statement of liability for such damages is included in the terms and conditions.

The Civil Code provides in Section 3281 "Every person who suffers detriment from the unlawful act or omission from another may recover from the person at fault a compensation therefor in money which is called damages." In the hearing officer's opinion a lessee of a forklift truck would lease the equipment for use in moving some type of tangible personal property. Depending on whether or not he was careful with the equipment, or whether the act of a third party damaged the equipment, as bailee thereof he would be responsible to the owner, notwithstanding the contractual arrangement in the rental terms and conditions. Annotations on this point appear in Commerce Clearing House and are cited by counsel to support the taxpayer's contentions. They provide:

"25. Damages for lost rental property. Amount paid by a lessee of oil well fishing tools to the lessor when the fishing tool is lost down a well should be regarded as damages and not gross receipts from a sale if the transaction was clearly intended as a rental and if the first two paragraphs of Ruling 62 are not otherwise applicable. Sales Tax Counsel, 10-20-52."

"25. Damage or loss charges. - A lessor of steel piling leased the piling under an agreement which provided that the lessee pay additional compensation for damage to the piling and for piling which the lessee could not remove from the ground and return to the lessor. The lessee had no right to retain usable piling. The additional charges for damage and loss of piling were not taxable rental charges. Sales Tax Counsel 10-21-65."

251. A voluntary payment by test equipment lessees in consideration of the lessor's assumption of a portion of the loss in the event of damage to the property, if separately stated in the invoice, is in the nature of insurance or waiver of liability and is not part of taxable rental receipts, not being a charge required to be paid for the rental of the property. Where such a charge is not segregated, the charge cannot be distinguished from the lessor's costs of operation which are recovered in the rental and are part of the taxable measure. Sales Tax Counsel 5 13-69."

"75. Repair parts. Sales tax does not apply to repair parts used by lessor in maintenance of equipment in possession of lessees under a rental agreement and upon which lessor is paying sales tax measured by rental receipts. Such repair parts may be regarded as part of the equipment in rental service. Sales Tax Counsel, 6-9-54."

The hearing officer concedes that factually the annotated opinions are not directly on point. However, it appears that the philosophy necessarily carries through. For instance the annotation regarding oil well fishing tools which are lost down a well are regarded as a loss payment and not regarded as gross receipts. I have difficulty distinguishing between a total loss of the unit, insofar as damages are concerned, and a partial loss. In other words, the loss of a headlight on a forklift truck depreciates the value of the truck but does not incapacitate it, at least for daytime use. However, the fact is that the headlight is gone and would have to be replaced in order to put the equipment back in acceptable condition. The hearing officer believes that receipts from repair of damages for extraordinary abuse are not contemplated as taxable rental receipts under the Sales and Use Tax Law. In view of this conclusion, the amount included in the determination should be deleted from the measure of tax. The amount paid by the taxpayer with respect to the cost of parts used in repairing the damage in question should also be deleted. Following the repair of the damage, the parts become incorporated into the leased item and the fact that tax is paid on rental receipts negates the requirement of paying tax on any components of the unit.

Recommendation

Cancel determination and refund payment made by taxpayer.

Jack D. Paulson, Hearing Officer

11 February 1975

Date