

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

335.0019

In the Matter of the Petition)
for Redetermination of State)
and Local Sales and Use Taxes)
DECISION AND RECOMMENDATION
OF HEARING OFFICER
H. L. C---.,)
Account No. SR --- XX XXXXXX
)
)
)
Petitioner.)

The above-entitled matter came on regularly for hearing on June 14, 1978 in Fresno, California.
H. L. Cohen, Hearing Officer.

Appearing for Petitioners: Mr. T--- W. H---, General Manager

Appearing for the Board Mr. M. Anderson, Principal Auditor
Fresno District

Mr. E. Smith, Auditor
Fresno District

Protest

Petitioner protests the assertion of tax on a lease of mobile transportation equipment. Tax was asserted pursuant to an audit covering the period from April 1, 1974, through December 31, 1976, and a determination issued on April 22, 1977. The amount upon which the protested tax is based is \$16,417.

Contentions

Petitioner contends that:

1. The equipment leased was not mobile transportation equipment, thus tax is not due on the purchase price; and
2. The equipment was leased outside California, thus the lease was not subject to tax.

Summary

1. Petitioner is a corporation which is in the business of building and selling cattle feeding equipment. It began in business in August 1955. The last prior audit was for the period ending March 31, 1971.
2. Petitioner manufactures a piece of equipment called a feed wagon which mixes feed ingredients and is used to transport the feed to the feeding trough. The feed wagon is mounted on a standard truck chassis. The truck engine provides power for mixing. Typically feed ingredients are stored in bins. Predetermined amounts of each ingredient are placed in the feed wagon, where they are mixed to achieve homogeneity. The feed bins are usually located on the same feed lot or dairy as the feeding troughs. The feed wagon transports the mixed feed from the bins to the troughs, which are usually only a short distance ways. The feed wagon does not normally travel over highways except to be serviced. Petitioner purchases the truck chassis for resale, paying no tax or tax reimbursement.
3. In December 1975 petitioner leased a feed wagon mounted on a 1974 Ford truck chassis to G--- B--- F--- L--- for use at its operation in ---, Texas. Petitioner does not usually lease the equipment it manufactures but did so in this instance because G--- wished to perform an evaluation of the equipment. Petitioner delivered the feed wagon by driving it to G--- in Texas. G--- drove the feed wagon back to petitioner's location in [California] at the conclusion of the lease period. The auditor considered the feed wagon to be mobile transportation equipment (MTE) and asserted tax based on the cost to petitioner.

Analysis and Conclusions

1. Section 6006(g)(4) of the Revenue and Taxation Code excludes from the definition of "sale" leases of MTE. Section 6023 of the Code defines MTE to include trucks. Sales and Use Tax Regulation 1661(b) further defines MTE to include equipment for use in transporting persons or property for substantial distances. We have interpreted this to me equipment designed for such use. See Business Taxes Law Guide, Annotations 335.0048, June 26, 1975 (airline lift catering trucks) and 335.0005, September 26, 1974 (mobile truck cranes). Petitioner's equipment is mounted on a truck chassis. It is capable of being driven for substantial distances. It was in fact driven from California to Texas and back. It could also be used to transport feed over a substantial distance from bins to troughs if the bins were a long distance from the troughs. It must be concluded that petitioner's equipment is MTE.
2. Section 6201 of the Code applies the use tax to the storage, use or other consumption in this state of tangible personal property purchased at retail for such storage, use or other consumption. As stated above, the lease of MTE is not a sale by the lessor; the act of leasing, however, is a taxable use. The fact that the functional use under the lease is outside the state is immaterial. The lease of the equipment by petitioner is thus subject to tax even though the function al use of the equipment under the lease was outside the state. However, it is not

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necessary to rely on this use alone. Petitioner operated the equipment in this state in transporting it to Texas. That use would of itself make petitioner liable for tax.

Recommendation

Redetermine without adjustment.

H. L. Cohen, Hearing Officer

July 5, 1978

Date