

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

430.0246

In the Matter of the Petition for
Redetermination of State and Local
Sales Tax and Transactions (SCRT)
Tax;

X-----

Petitioner.

DECISION AND RECOMMENDATION
OF HEARING OFFICER

Account No. X-----

The above-entitled matter came on regularly for hearing on Monday, December 16, 1974 in San Diego, California.

Appearances:

For Petitioner:

X-----

X-----

For Board of Equalization:

Mr. Gordon Ralyea, Auditor
San Diego District

Protest

Pursuant to an audit covering the period from 01-01-70 through 12-31-72, and a determination issued on June 15, 1973, Petitioner protests the assessment for sales tax on charges made to a customer for camera ready art. The measure of the tax assessed is \$16,081.

Contentions

No sale of camera ready artwork took place even though the customer was billed for it along with the charges for printing the publication.

The auditor made the assessment on the basis of the form used to bill the customer rather than the substance of the charges made.

Summary of Facts

Petitioner is a corporation that generally speaking operates as a prime contractor under cost plus fixed fee contracts with the United States Navy. Petitioner performs various

nontaxable services for customers, produces camera ready art., sells various types of pamphlets and manuals.

This controversy arises as a result of a transaction with a firm known as X----- located in Woodland Hills, California.

X----- produced some test equipment for sale to be used in testing memory units in computers. In order to be sure the equipment was operated properly, the manufacturer wanted an operating manual to be furnished with the equipment that was sold.

Petitioner was engaged to develop, produce, and print a manual for X-----'s test equipment. X----- furnished Petitioner with engineering data which Petitioner used in the development and preparation of camera ready copy that was used to print the manual.

Petitioner billed X----- for the printing and for the camera ready copy work. Exhibit A is a copy of X-----'s purchase order for 200 manuals which apparently was prepared after the printing was completed, or if not was prepared on the basis of some firm bid or estimate of costs.

The auditor concluded that since there was a separate amount billed for preparation of the camera ready copy there was a sale of it and that sale was subject to sales tax. The sale of the manuals were not subject to sales tax since they were for resale and were sold along with the test equipment units that were sold.

X----- stated that the camera ready copy is not sold to X-----, it is retained by X----- and is eventually discarded. He stated that there is no agreement in writing or oral to the effect that X----- was purchasing camera ready copy as an item of tangible personal property, and the cost of preparation of the copy is a part of the cost of the manual regardless of how it is billed.

He stated that the camera ready copy is of no use to the customer because with present printing techniques all that the customer would need to reproduce the manual, if more copies were needed and Petitioner were not given the job, would be to use one of the manuals as photo or camera ready copy.

Conclusions

If the manuals had not been purchased for resale, but instead had been ordered and purchased for X-----'s own use in training employees, salesmen and maintenance personnel there is no doubt that the separately stated charge for the photo copy work would have been included in the taxable measure of the manuals that were sold. This would be so even if photo copy materials had been sold to the customer in interstate commerce or for resale.

In some respects the facts in this case are not unlike those in the petition of X----- . In that matter X----- prepared camera ready copy for the Boeing 747 aircraft manual. It was prepared from data furnished X----- by Boeing. X----- then had the manual printed by a printer chosen by X----- . The printer billed X----- for the printing and this was passed on to Boeing in another billing without any markup. In addition, X----- separately billed Boeing for the camera ready copy produced and used to print the manuals.

X----- was not assessed sales tax on its charges for the camera ready copy as it was not sold to Boeing for the amount charged. The manuals were purchased for resale so there was no tax on the charge for the printing of them.

One day Boeing unilaterally decided to handle the printing itself and all X----- did was prepare the camera ready copy for Boeing and deliver it to the possession of a printer designated by Boeing. Boeing thus dealt directly with the printer for the printing of the manual. Under these circumstances the Board held that there was either a sale of the camera ready copy under subsection (f) of section 6006 or a lease of it under subsection (g) of section 6006, since possession, without title was transferred to someone designated by Boeing.

In this matter Petitioner did the printing and is in the same situation as X----- was when it handled the printing rather than when Boeing decided to handle it.

Petitioner's charges for the camera ready art work are a part of the charge for the manuals printed and regardless of how invoiced they are taxable or exempt along with and in the same manner as the separate charge for the manuals. Thus, inasmuch as the manuals were purchased for resale, and were sold ex tax, there is no tax on the charge for preparing the camera ready materials.

Recommendation

Redetermine. Delete the protested item from the measure of tax liability. No other adjustments.

Robert H. Anderson, Hearing Officer

January 7, 1975