

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petitions)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	
)	
L--- T--- CORP.)	Nos. SR – XX XXXXXX-010
)	
H--- J---, INC.)	SR – XX XXXXXX-010
)	
)	
<u>Petitioners</u>)	

The Appeals conference in the above-referenced matters was held by Staff Counsel Lucian Khan on December 7, 199X in Hollywood, California.

Appearing for Petitioners
(hereinafter petitioner): No appearance.

Appearing for the
Sales and Use Tax Department
(SUTD): Forrest Paisley, CPA
Supervising Tax Auditor

Marzo Sacasa
Tax Auditor

Barbara P. Lin
Tax Auditor

Protested Item

L--- T--- Corp. - Petitioner protests the disallowed sales on a tax-included basis for the period January 1, 1989 through December 31, 1991 measured by the amount of \$39,466.

H--- J---, Inc. - Petitioner protests the disallowed sales on a tax-included basis for the period October 1, 1988 through October 31, 1989 measured by the amount of \$12,765.

Contention

All sales were on a tax-included basis; therefore, no additional tax is due.

Summary

Petitioners are related corporations which operated a jewelry shop located inside the --- Hotel in downtown Los Angeles. In March of 1992, auditor Marzo Sacasa completed an audit of both accounts in which he disallowed claimed sales on a tax-included basis. In discussing the audit findings with petitioner's bookkeeper, J--- T---, he advised her as to the proper wording required to post a tax-included sign at the business premises.

On June 10, 1992, petitioner's representative, T--- S---, filed a petition for redetermination. In that letter, he argues all sales were made on a tax-included basis; however, there is no mention that a tax-included sign was at petitioner's premises.

Shortly thereafter, J--- T--- provided SUTD photocopies of various invoices in support of petitioner's argument that sales were made on a tax-included basis. The 12 invoices submitted all show a customer name which appears to be of Japanese origin, and three of the invoices contain a separate entry for sales tax. The remaining nine invoices contain no such entry. None of the invoices contain a statement that tax was included in the sales price.

On August 12, 1992, Mr. S--- met with SUTD and presented copies of two signs (in Japanese) which he claimed contained statements to the effect that sales tax was included in the purchase price. He stated the signs were presented to purchasing tourists, who stayed at the --- Hotel.

On the day of the conference, Mr. S--- contacted the Hollywood office advising he no longer represents petitioner, who is now out of business. The principals of the corporation have moved back to Japan. He provided no further arguments on behalf of petitioner.

At the conference, auditor Barbara Lin reviewed the copies of the two signs earlier submitted by Mr. S---, and confirmed that each sign essentially states, "The receipt includes the sales tax". Auditor Marzo Sacasa maintained that at the time he completed the audit, petitioner did not have any tax- included signs at the business premises. He explained to Ms. T--- the proper procedure for making sales on a tax-included basis, and she asked him to provide the specific wording, so that a sign could be prepared. The signs were prepared only after the audit was already concluded.

Analysis and Conclusions

Whether or not property is considered sold at a tax-included price will depend on the facts and circumstances surrounding the sale. It shall be presumed that property is sold at a price which includes tax reimbursement if the retailer posts on the premises, includes on a price tag, or in an advertisement, a notice stating either of the following: (1) all prices of taxable items include sales tax reimbursement computed to the nearest mill, or (2) the price of this item includes sales tax reimbursement computed to the nearest mill. (Civil Code section 1656.1, Sales and Use Tax Regulation 1700(a)(2)(C), (A), (B).)

There is no express requirement that a sign placed in the retailer's business premises be only in the English language. However, where the only sign is in Japanese, this presents the problem of whether non-Japanese speaking people are adequately notified that sales are made on a tax-included basis. As to whether the signs were at the premises during the audit period in which the sales were made, after reviewing the evidence presented, I conclude they were not. The "Report of Field Audit", dated March 31, 1992, and approved by Mr. Sacasa's supervisor on May 28, 1992 indicates that petitioner acknowledged no signs were posted on the premises. In the June 10, 1992 petition for redetermination, Mr. S--- argues that sales were made on a tax-included basis, but makes no mention of any signs on the premises. It was not until the August 12, 1992 meeting that Mr. S--- first mentioned the signs. This is approximately four and one-half months after the Report of Field Audit was prepared. It is also noted that of the 12 sample invoices submitted in support of petitioner's argument, three of the invoices contain a separate entry for sales tax, while the other invoices do not. I find it inconsistent that petitioner would post a sign at its premises informing the purchaser that sales tax was included, yet tax would be added to the purchase price in some of those transactions. The fact that transactions were handled on an inconsistent basis is further proof that petitioner did not establish a consistent procedure for making sales on a tax-included basis.

Recommendation

Deny the petitions.

Lucian Khan, Staff Counsel

1/7/94

Date