

**STATE OF CALIFORNIA
BOARD OF EQUALIZATION**

In the Matter of the Petition for)	
Redetermination of State and)	DECISION AND RECOMMENDATION
Local Sales Tax;)	OF HEARING OFFICER
)	
REDACTED TEXT)	No. REDACTED TEXT
)	
_____ Petitioner.)	

The above-entitled matter came on regularly for hearing on Wednesday, August 9, 1978 in Santa Ana, California before Robert H. Anderson, Hearing Officer.

Appearing for Petitioner: REDACTED TEXT
Secretary-Treasurer

Appearing for the Board: Mr. M. L. Lewis
Principal Auditor
Orange County District

Ms. J. M. Frankel
Auditor
Orange County District

Protest

Petitioner protests the assessment for sales tax on gross receipts from charges for servicing washrooms deemed to be sales of soap and toilet tissue. The audited measure of tax is \$140,356 for the period from 10-1-74 through 9-30-77. A credit measured by \$-80,158 was allowed for tax paid on the purchase of toilet tissue and soap during the period.

A determination was issued on January 25, 1978, and on January 31, 1978 a timely petition was filed.

Contentions:

Petitioner contends that the auditor, in deeming the washroom service activity to be a sale of the soap and toilet tissue, has changed a long standing position of the Board in respect to petitioner's business.

Summary

Petitioner is in the industrial uniform rental business which includes supplying uniforms to service stations. As a part of the service petitioner provides a washroom service which may

include cloth roll towels for drying hands and face, toilet tissue dispensers, paper seat cover dispensers and soap dispensers. The towels are removed when soiled, and the tissue, seat cover and soap dispensers are serviced on a regular schedule basis. Generally, servicing the washrooms in service stations coincides with calling on the station to bring clean uniforms and pick up the soiled ones for laundering.

Petitioner has always paid sales tax on purchases of toilet tissue, soap and seat covers since they were advised many years ago by the Santa Ana office of the Board of Equalization that they were the consumer of these items.

Mr. REDACTED TEXT stated that on January 7, 1970 he called on the Santa Ana office of the Board and talked to a REDACTED TEXT about the application of the tax on toilet tissue, soap, etc. placed in petitioner's dispensers when servicing washrooms in service stations and other business or industrial facilities. He said he was advised to pay tax on the disposables since he would be a consumer of them when rendering the washroom service. The firm has followed this practice ever since it began furnishing a washroom package service in conjunction with its service rental agreement. There have been prior audits and the consumer approach to the tax question was accepted.

Mr. REDACTED TEXT stated that when a customer purchases soap, tissue, etc. to install himself, sales tax is charged for the items. In one prior audit an auditor noted that petitioner had not been taking credit for the tax paid purchases resold when sales tax was charged on sales of tissue, soap, etc., so a credit was given for that portion of the soap, tissue, etc. purchased tax paid and sold.

He said that competitors in the area are being audited as consumers, but he did not name anyone in particular.

Mr. REDACTED TEXT stated that REDACTED TEXT does not provide a washroom service to any service station that requests it because they could not afford to at the price they charge, and if they were to make it profitable, the cost to the station would be prohibitive. The washroom service is supplied as part of a "Service Rental Agreement" that includes a uniform rental and cleaning service. This is where the profit lies. Thus, the washroom package service is an extra which alone could not support itself.

The theory for reversing the long standing administrative position in petitioner's audit lies in the fact that the auditor believed the true object of the washroom package portion of the Service Rental Agreement is to obtain the toilet tissue, paper seat covers, and soap, and not getting the dispensers and having them periodically serviced by petitioner.

REDACTED TEXT also furnishes and installs air fresheners, but there was no tax assessed on the air freshener materials because it was concluded that the true object of that portion of an agreement was fresh air and not the acquisition of an air freshener unit and the material that freshened the air.

As noted, the washroom service package is included in the Service Rental Agreement that includes furnishing clean uniforms periodically. There is a weekly charge quoted in the

agreement for such items as roll towels, toilet tissue, soap, shirts, pants, etc. In addition, the agreement contains an amount to be billed and paid in the event that the customer loses any dispensers used to dispense roll towels, toilet tissue, etc.

The Service Rental Agreement contains, among other things, the following:

REDACTED TEXT SUPPLY ("REDACTED TEXT") agrees to furnish, and pick-up and deliver the articles of Merchandise listed below, and CUSTOMER agrees to rent its total requirements of said Merchandise from REDACTED TEXT at the indicated prices per person; CUSTOMER further agrees to pay for Merchandise that CUSTOMER loses at the Lost Charge listed below:

	<u>Changes</u> <u>Per</u> <u>Week</u>	<u>Unit</u> <u>Price</u>	<u>Weekly</u> <u>Charge</u> <u>Per Person</u>	<u>Lost</u> <u>Charge</u>
Shirts	5	.65	3.25	6.00
Pants	5	.70	3.50	8.25
Roll Towel	1	2.65	2.65	19.50
Soap	1	.28	.28	5.95
Toilet Tissue	1	.67	.67	11.50

In the audit tax was measured by the charge for the soap and the toilet tissue in this example, and a tax paid purchase resold credit was given. Mr. REDACTED TEXT stated that REDACTED TEXT computes its charge on the soap and tissue for example using an amount for servicing the dispensers; this would include placing the soap and tissue in the dispensers.

Conclusions

The washroom service package is included in the uniform rental package which is contracted under a "Service Rental Agreement". There is a weekly charge quoted for such items as roll towels, toilet tissue, soap, shirts, pants, etc. Container-dispensers are purchased tax paid, furnished and installed on the lessee's premises and they are serviced periodically. Thus, there is installation of the dispensers and continual installation of the contents, all of which is included in the price charged. In addition, the agreement contains an amount to be billed and paid in the event that the customer loses any containers used to dispense towels, toilet tissue, soap, etc. Under these conditions it would be reasonable to allocate a portion of the charge to tax paid property furnished and installed which would bring the price charged for the tangible personal property close to cost.

Be that as it may, the fact is established that petitioner was advised that he should handle his washroom service business as a consumer and purchase the disposable items tax paid; he has done this and has been audited several times without any change and without any decision that he is retailing the disposables.

A survey of twenty-one (21) districts and subdistricts in the state was made by Audit Evaluation and Planning at the request of the office of the Principal Auditor to ascertain how other districts

were auditing persons in the same type of business. Orange County District was not included in the survey due to this petition. Following is a result, of the survey:

Twelve (12) districts reported no audit experience in this type of business: Eight (8) districts reported that the business was treated as a consumer of paper, soap, seat covers, etc. Three of the eight districts reported minor retail sales of soap, paper and seat covers; they held seller's permits because of the minor sales of tangible personal property outside of their primary endeavor of providing services.

One district reported that its permittee has been treated as a retailer of tissue, soap and seat covers, but no amounts were given.

In sum, the survey disclosed that the majority of taxpayers operating washroom servicing businesses are treated as consumers, which is consistent with the way petitioner was told to handle his business.

Recommendation

Redetermine. Delete the audited measure of tax and the audited credit for tax paid purchases resold credit. Adjustment to be made by Petitions Unit.

Robert H. Anderson, Hearing Officer

Feb 2, 1979
Date