STATE BOARD OF EQUALIZATION

January 7, 1964

We have reviewed your separate petitions for redetermination of sales and use tax in the light of information obtained at the preliminary hearing on these petitions and other information subsequently provided by you. The purpose of this letter is to advise you of our conclusions and intended recommendations on your petitions.

You have contended that the state use tax should not apply to several tractors and trailers purchased by your firm from out-of-state sources. The basis for your contention is that the vehicles in question were used "continuously" in interstate commerce within the meaning of sales and use tax ruling 55. In a supplemental letter dated August 29, 1963, you have asserted that the character of the cargo rather than the movement of a vehicle determines whether a given vehicle is used in interstate commerce. You have concluded that if a vehicle is used even occasionally to haul an interstate package, and entirely within the borders of one state, it is used continuously in interstate commerce.

We agree that the character of the cargo carried determines whether a given piece of equipment is used in interstate commerce. However, we certainly cannot agree with your views as to what constitutes continuous use in interstate commerce for reasons which will be stated hereafter.

Each of the vehicles in question were purchased out of state and are said to have immediately entered this state carrying merchandise in interstate commerce. Thereafter, the vehicles were based in this state and used to perform freight hauls both in intrastate and interstate commerce. Some of the hauls were wholly intrastate and others carried mixed shipments of intrastate and interstate goods.

Sales and use tax ruling 55 implements section 6352 of the Revenue and Taxation Code by spelling out when property will not be taxed because taxation is prohibited under the Constitution or laws of the United States or under the Constitution of this state. This is the construction which has consistently been placed on the ruling by the courts. See Western Pacific Railway Co. v. State Board of Equalization, 213 A.C.A. 20. This ruling does not set up an exemption from taxation because there has been some use of property in hauling interstate shipment of goods.

Where it is shown that property is purchased for use in California and there is intrastate use of property not intermingled with interstate use, this is sufficient to support the tax since the property is not, during the course of such use, an instrumentality of interstate commerce.

We believe the fact that each piece of equipment was brought to California immediately after purchase, was based in this state, and was actually used primarily in this state is sufficient to show that each was purchased for use in this state. Administratively, we have considered property as being purchased for use in this state if the property is brought to this state and used more than one-half of the time in this state during the first six months of its use, regardless of the character of the use. Accordingly, if there is some wholly intrastate event or haul during this period, a taxable use of the property has occurred since the property has not been used continuously in interstate commerce. We understand that there was such use as to each of the vehicles in question.

In addition, it appears that the use tax on these vehicles can be upheld on the "taxable moment" theory announced in the case of Southern Pacific Co. v. Gallagher, 306 U.S. 167, and followed by our state courts in deciding the Atchison, Topeka and Santa Fe Railway Co. v. State Board of Equalization, 139 Cal.App.2d 411; and the recent cases of Western Pacific Railway Co. v. State Board of Equalization, supra, 213 A.C.A. 20, and American Airlines, Inc. v. State Board of Equalization, 216 A.C. A. 215.

On facts quite similar to those present here, the court in the Santa Fe Railway Co. case found that there was a "taxable moment" when property purchased outside the state had reached the end of its interstate transportation and had not begun to be consumed in interstate commerce. An insignificant amount of prior use of the property outside California was treated as a mere "formal use" which did not serve to insulate the property from taxation.

It is our opinion that a single trip to California prior to being based in California is a similar "formal use" which should not serve as a basis for exempting property purchased for use in this state from state taxation. The courts uniformly agree that interstate commerce can be required to pay its fair share of taxes including sales and use taxes. The only limitations being that the tax does not discriminate against interstate commerce or unduly burden the commerce by requiring it to pay too much or too often. Requiring payment of the use tax on the vehicles in question would not discriminate against interstate commerce, but merely place it on a parity with intrastate business. Nor would it unduly burden the commerce since there is no evidence of multiple taxation on these vehicles.

At the preliminary hearing, it was also contended that the 1 percent local use tax should not apply to the trailers assigned to a certain company. These trailers were used to perform transportation for a company in Los Angeles County. In order to be exempt from the county use tax in this situation, the user must be a public utility and must meet the requirements for exemption set forth in local sales and use tax ruling 2205 (copy enclosed). Only carriers holding certificated rights are regarded as public utilities for purposes of this exemption and the use of the property must be used exclusively in performing common carriage. We note that the company did not have certificated rights for the hauling in question. In addition, it appears that the trailers were used to perform contract carriage since they were assigned to the company for use on a "per day" basis. This also would exclude the trailers from the exemption provided by ruling 2205.

For the reasons set forth above, we shall recommend that the separate petitions for redetermination be denied. Please advise us within a period of thirty days if you desire a further hearing on these matters. If we do not hear from you during this period, we shall assume that no further hearing is desired and recommend that the tax be redetermined.

Very truly yours,

W. E. Burkett
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