STATE OF CALIFORNIA

BOARD OF EQUALIZATION

820.0085

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of:	)	DECISION AND RECOMMENDATION
MR. A. B. C---, ET AL dba P--- P--- CO.	)	No. SR -- XX-XXXXXX-010
Taxpayer	)	

The preliminary hearing on the above taxpayer's petition for redetermination was held on April 13, 1983, in Sacramento, California.

Hearing Officer: Henry A. Dyer

Appearing for Petitioner: --- --- ---
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Appearing for the Board: Mr. E. King
Auditor

Protested Item

The protested tax liability for the period April 1, 1979 through March 31, 1982 is measured by:

Item	Measure
Claimed BART ship-outs disallowed	$269,744

Taxpayer's Contention

The poster sales are not consummated in the BART area. Hence, they should not be subject to the BART tax.

Summary of the Case

Petitioner, a partnership, prints billboard signs and posters. This is the first audit of the business.

The staff noted only 6 percent tax was charged on signs printed by petitioner and delivered by them to F--- & K--- in [city] for pasting. After pasting the signs are taken by F--- & K--- and posted on billboards outside the BART area. The field staff believed F--- & K--- accepted signs in the BART area on behalf of the customer. Hence, the sale was made in the BART area and subject to tax. Sales of signs which the petitioner was required to ship directly outside the BART area were not included in the audited taxable measure.

At the hearing, petitioner's representatives explained that they do not consider the sale completed until the sign is posted and accepted by the customer. They state that if the customer does not approve of the completed job, they either adjust the price or correct the defect. They believe the sale is not finalized in the BART area, hence, no sale in the BART area. Petitioner states the following sets forth the sequence of events:

1. A customer contacts the billboard company regarding sign availability.

2. A customer orders a sign from the petitioner. Petitioner confirms the order by sending the customer an authorization to print which covers:

   a. Number, size and color of the sign.

   b. Delivery instructions and date schedule.

   c. Confirms price.

3. The sign is printed and sent to the installing contractor for pasting and posting.

4. The petitioner bills the client of the ad agency.

5. The customer or the ad agency pays the installing contractor.

Petitioner asserts that often due to time restraints the customer does not see the completed sign until it is put up. Petitioner asserts title to the poster does not pass until it is accepted by the customer. Since this does not happen until it is installed outside the BART area, the BART tax should not apply.

Analysis and Conclusions

The Transactions and Use Tax Law (BART tax) imposes a tax for the privilege of selling tangible personal property at retail upon every retailer at the rate of ½ percent of the gross receipts from the sale of all tangible personal property sold by him at retail in the district.

Regulation 1822 (PLACE OF SALE FOR PURPOSES OF TRANSACTIONS [SALES] AND USE TAXES) provides in pertinent part:

> "RETAILERS HAVING ONE PLACE OF BUSINESS. For the purposes of the Transactions (Sales) and Use Tax Law, if a retailer has only one place of business in this state, all California retail sales occur at that place of business unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination."

> "PLACE OF PASSAGE OF TITLE IMMATERIAL. If title to the tangible personal property sold passes to the purchaser in California, it is immaterial that title passes to the purchaser outside the taxing jurisdiction in which the retailer's place of business is located."

Regulation 1823 (APPLICATION OF TRANSACTIONS [SALES] TAX AND USE TAX) provides for certain exceptions and one of these provides the state-administered transactions (sales) tax does not apply to gross receipts of tangible personal property to be used outside the district when the property is sold and shipped to a point outside the district pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to carrier for shipment to a consignee at such point. If purchaser uses the property in the district imposing this transaction (sales) and use taxes, the use tax may apply.

In the case at hand, petitioner is required to deliver posters to the installing contractor who pastes and posts the posters. The petitioner does not contract with the installing contractor as the customer makes these arrangements and pays the installer directly.

Based upon these facts, we conclude petitioner is not required to ship the posters at issue here outside the BART area. Accordingly, an exemption for ship-outs for the items in dispute in this case is not appropriate. In contract, posters which the petitioner ships to an installing contractor outside the BART area qualify for the exemption and these are not included in the audited taxable measure.

Recommendation

Headquarters' Petition Unit to redetermine the tax without change.

Henry A. Dyer, Hearing Officer — 7/7/83 Date