

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

195.2117

In the Matter of the Petition
for Redetermination Under the
Sales and Use Tax Law of:

DECISION AND RECOMMENDATION

REDACTED TEXT

Petitioner

The above-entitled matter came on regularly for hearing on Monday, April 13, 1981 in REDACTED TEXT, California before Susan M. Wengel, Hearing Officer.

Appearing for Petitioner: REDACTED TEXT

Appearing for the Board: Paul Nelson, Tax Auditor III

Protested Item

The petitioner has filed a petition for redetermination of a tax deficiency determination issued on September 22, 1980, for the period January 1, 1977 through June 30, 1980. The protest involves tax determined on the following audit item:

Audit Item C:

Sales of labels to REDACTED TEXT which
were used in their services. (actual basis) \$56,902

Contentions of Petitioner

1. Sales are not made to REDACTED TEXT, they merely act as a conduit through which the property to various customers move.
2. Sales are not made until after obtaining a signed statement that a given customer does in fact hold a valid sellers permit for the State of California.

Summary of Petition

The petitioner is a Corporation engaged in the business of printing labels. Many of the petitioner's customers are manufacturers of lighting fixtures.

The petitioners customers place their orders for labels in one of three different ways. In what the petitioner calls an "R" type transaction the customer places a purchase order and a resale certificate with the petitioner. The petitioner calls REDACTED TEXT Laboratories REDACTED TEXT and they confirm that the customer has tested the light fixture with REDACTED TEXT. The petitioner cannot manufacture the labels until they have confirmed that the product has been tested by REDACTED TEXT. In type "R" transactions the petitioner sends the labels directly to the customer. These "R" type transactions are not at issue in this petition.

In type "L" transactions the customers will provide the petitioner with a purchase order and a resale certificate. The petitioner will send a copy of the purchase order to REDACTED TEXT which will confirm that the products have been tested. Underwriters will also tell the petitioner what issue numbers to print on the labels. The labels will be printed and then sent to REDACTED TEXT. The labels will be checked to be sure the labels properly reflect that the product on which the label will be used has been tested and that the issue numbers are correct. The labels are then sent to the customer along with a bill. This bill is only a copy of the invoice which the petitioner sent to REDACTED TEXT. There is no mark up on this bill. The customer will pay the bill to REDACTED TEXT and then REDACTED TEXT will pay the petitioner.

In type "A" transactions the procedure is the same as type "L" transactions except that the petitioner bills the customer separately and the customer pays the petitioner directly. In both type "A" and "L" transactions it is the customer who places the labels on the property before the property is sold.

The audit staff concluded that the labels were sold to REDACTED TEXT. This is based on the fact that REDACTED TEXT enters into contracts to test certain products for a given amount plus reimbursement for the cost of the labels to be attached to the product. The audit staff is of the opinion that these charges are a cost reimbursement rather than a sale by REDACTED TEXT. In other words there is a sale of the labels to REDACTED TEXT which uses the labels.

The petitioner contends that the labels are never sold to REDACTED TEXT.

Analysis and Conclusion

Sales and Use Tax Regulation 1589 (b) (2)(A) provides that tax does not apply to sales of labels if the purchaser affixes the labels to the property to be sold and sells them along with and as a part of that property. The labels in question identify the fixture by name and/or number, identify the manufacturer, and indicate that the fixture has been made

according to specifications outlined by Underwriters for such applications. It is concluded that these labels are the type which could be purchased for resale.

In the type "A" transactions the petitioner's customer, the lighting manufacturer, will negotiate a price with the petitioner, will issue the purchase order and will pay the bill which is sent directly to him. The labels, however will be delivered to REDACTED TEXT which will check the information on the labels before sending the labels on to the lighting manufacturer. Underwriters in the type "A" transactions is acting only as the agent for the lighting manufacturer by accepting delivery of the labels. The sales are to the lighting manufacturers and are sales for resale for which the petitioner properly accepted resale certificates.

In the type "L" transactions, the labels are delivered to REDACTED TEXT and the lighting manufacturer pays REDACTED TEXT who in turn pays the petitioner. It is the lighting manufacturer who negotiates the price and places the purchase order. In all probability these sales are also made to the lighting manufacturer with mere delivery to REDACTED TEXT and as such would be exempt sales for resale. However, the lighting manufacturers have contracts with REDACTED TEXT whereby REDACTED TEXT tests their product and the manufacturer pays a set fee for the testing plus reimbursement for the labels. As there is delivery to REDACTED TEXT and payment by REDACTED TEXT there could be a sale to REDACTED TEXT. These sales would, however, be sales for resale as REDACTED TEXT does nothing but inspect the labels and ship them on to the manufacturer who affixes them to the property before he sells the property. There is no taxable use. Sales and Use Tax Regulation 1668 (a) provides that the seller has the burden of showing that a sale is not at retail unless they take a resale certificate. The petitioner did not take a resale certificate but has submitted evidence that REDACTED TEXT does not affix the labels and does not even maintain an inspector at the manufacturer's assembly line to supervise the placement of the labels on the products.

It is concluded that both the type "A" and the type "L" transactions are not subject to tax.

Recommendation

It is recommended that audit item C which relates to the sales of labels to REDACTED TEXT Laboratory be deleted from the measure of tax and that the remaining liability be redetermined without adjustment.

Susan M. Wengel, Hearing Officer

April 30, 1981