

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

455.0750

APPEALS UNIT

In the Matter of the Petition)
for Redetermination Under the) DECISION AND RECOMMENDATION
Sales and Use Tax Law) OF HEARING OFFICER
)
H--- E---) No. S- -- XX-XXXXXX-XXX
An Individual Proprietorship)
)
Petitioner)

This matter came on regularly for hearing in Van Nuys, California, on December 3, 1974.

Appearing for the taxpayer was Mr. ABC, proprietor, and his wife, XYZ. Messrs. Tibbets, Smithkin and Hellie appeared for the Board.

Protested Item
(Period 1-1-70 to 12-31-72)

Taxable rental income. \$13,716

Contentions of Taxpayer

1. The rentals are exempt from taxation because sales tax reimbursement was paid on the rental property at the time of purchase.
2. Proof of the taxpaid purchases is not required because the purchases were made more than four (4) years prior to the dates of the rentals.

Summary of Petition

The taxpayer is engaged in the business of selling and renting shore clamps. The clamps are a specialty item of equipment utilized by construction contractors.

All income derived by the taxpayer from the rental of the shore clamps was included in the measure of tax deficiency on the basis that the taxpayer failed to prove that the clamps were purchased taxpaid. The clamps were concededly rented in substantially the same form as acquired.

The taxpayer contends that all purchases of shore clamps were acquired taxpaid from a California vendor. However, he was unable to document this contention since the purchase invoices and related documents have been destroyed.

The audit staff attempted to verify the taxpayer's contention by contacting the former owners or operators of the business that produced the shore clamps. The result of this additional audit investigation is summarized in pertinent part by the staff as follows:

“Auditor Smithkin contacted PQR by telephone at XXX-XXXX on June 19. PQR operated the machine shop that produced the shore clamp. His business, GHI, was operated to 1960, then sold. GHI took back the business in 1966 and later in 1968, sold the business to MNO.

GHI stated that his records were destroyed by water damage when there was a fire next door. He recalled that the material for the shore clamp was furnished by OPQ. OPQ did only a stamping operation, which was labor only. No tax was charged to HE.

[---] operated the business [--- ---]. He was contacted by telephone [--- ---], and informed Mr. Smithkin that he never charged tax to [--- ---] on the fabrication of shore clamps.”

Purchases of shore clamps during the current audit period were made without the payment of sales tax reimbursement or use tax. The taxpayer's representative advised that these were purchased for the purpose of immediate resale in the regular course of business.

The taxpayer further contends that the Board's regulation number 1698 authorized the destruction of records after a period of four years have passed, and that he is, therefore, excused from proving that the purchases were made taxpaid. It was also pointed out that no liability for use tax on shore clamp purchases was disclosed by the prior audit.

A review of the prior audit does not indicate that any review was made of the shore clamp purchase invoices. However, the taxpayer had made an election to pay tax on the purchase price of dryers used in an apartment laundry rental business.

Analysis and Conclusions

The exclusion of taxpaid rentals from classification as leasing sales is in the nature of an exemption from taxation for which the taxpayer has the burden of proof (see Ladd v. State Board of Equalization, 31, Cal.App.3d 35).

The taxpayer has asserted that the shore clamps were purchased on a taxpaid to vendor basis. However, this conflicts with the information provided by the vendors and his current practice for the shore clamps. Accordingly, we conclude that the taxpayer has failed to meet the burden of proving an exemption for the shore clamp rental income.

The taxpayer correctly contends that the provisions of Sales and Use Tax Regulation 1698 authorized the destruction of records after a period of not less than four (4) years. However, as we view it, this proviso was merely intended to relieve a taxpayer from the burdensome requirement of maintaining records after their usefulness as documents for verification had passed. Generally, the provisions of Revenue and Taxation Code Section 6487 limit the issuance of a tax deficiency to a period of three years from the due date of the tax. We do not read the regulation as authorizing the destruction of records required to prove deductions for current periods. If records are required for this purpose then they must be retained.

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W. E. Burkett, Hearing Officer

2-25-75

Date