

STATE OF CALIFORNIA

557.0105

BOARD OF EQUALIZATION

In the Matter of the Petition)	
for Redetermination Under the)	DECISION AND RECOMMENDATION
Sales and Use Tax Law of:)	OF HEARING OFFICER
)	
U--- B---)	Account No. SC -- XX XXXXXX
)	
)	
<u>Petitioner</u>)	

The above entitled matter came on regularly for hearing on Tuesday, February 12, 1973, at 10:00 a.m. in Los Angeles, California.

Appearing for Petitioner:

Mr. C. T. H---, Comptroller
 Mr. W--- S---, Accounting Officer
 Mr. R--- A. M---, Certified Public Accountant,
 P---, M---, M--- Co.

Appearing for the Board:

Ms. A. Bergstrom, Supervising Auditor
 Mr. H. Rutta, Auditor

<u>Protested Items</u>		
	<u>Measure at 5% Rate</u>	<u>Measure at ½% Rate</u>
A. Sale of capital assets	\$143,449	
E. Sales of customers checks – Delivery charges	121,295	\$21,709

The protested portion of Item A consists of the sale of the computer division to U--- C--- Corporation in the amount of \$128,774.

Petitioner's Contention

1. The transfer of the assets of the computer activity constitutes an occasional sale.
2. The delivery charges are not subject to the tax.

Summary of Petition

Petitioner is a full service commercial bank. Its activities includes the leasing of tangible personal property and the retail sales of tangible personal property acquired by repossession and foreclosures. The bank is registered with the board and holds a seller's permit.

The first protested item concerns the transfer by petitioner of the furniture, fixtures, and equipment used in connection with its computer activities to U--- C--- Corporation for cash.

The second protested item is in connection with the sales of personalized checks to its depositors for which it made a lump-sum charge with no separately stated amount for the postage.

Analysis and Conclusion

1. Sale of Capital Assets

The furniture, fixtures, and equipment were sold pursuant to "Bill of Sale and Agreement" entered into by U--- B--- (petitioner) and U--- C--- Corporation dated November 15, 1968. The sales price of the tangible personal property transferred was included in the audit at those prices designated on a contemporaneous "Schedule of Equipment Sold" attached to the Bill of Sale and Agreement. The equipment sold had been used by the bank in its computer department in connection with its banking activities and consisted of only a small portion of the banks total assets.

Petitioner has contended that the transfer qualifies as an exempt occasional sale on the grounds that the computer department was operated as an antonomous "operational unit" or division whose activities were separate and apart from the other activities of the bank; that the property sold was not held or used in an activity for which a seller's permit was required.

In brief submitted by Mr. M--- subsequent to the hearing, Sales Tax Counsel Opinion, April 18, 1958 (Cal. Tax Service Ann. No. 395.0380) is cited in support of the contention. The annotated portion of the Tax Counsel Opinion Published in the Tax Service provides that the following points be considered in deciding whether the taxpayer is engaged in separate and distinct activities.

1. Each 'division' as a completely separate set of books, including separate journal and general ledgers.
2. Each set of books is separately maintained.
3. Separate bank accounts are maintained.
4. Employees are active in only one division.
5. The divisions are housed in separate buildings.
6. Each division has its own fixed assets, including automotive and office equipment which is not used interchangeably.

While compliance with the above-listed points would be persuasive in a determination of the status of an activity, it is not conclusive. The points were propounded to be considered in light of the application of the general test contained in the opinion of Attorney General No. N.S. – 5872, dated April 22, 1946, which provides in pertinent part:

“The real test, in our opinion, is whether the so-called separate business is such in fact or whether, on the contrary, it is a mere department or subdivision of one unified business which constitutes a single economic enterprise. Examples of such formal subdivision may be found where one ‘business’ is the producing unit, another the marketing unit and another a financing or servicing unit of an entire business system in which all units are under common control”. (Emphasis added.)

Admittedly, each point listed in the annotation is not present in the instant matter. Additionally, the computer “division” appears more aptly to qualify as a department or subdivision of a unified business comprising a servicing unit. The computers and equipment were used by the bank for its own purposes. The audit working paper comments state and we were informed at the hearing, that no services were performed for outsiders; that in fact the bank was prohibited from doing computer work of outsiders.

The definition of an occasional sale is limited by the statutory provisions of Section 6006.5 of the Revenue and Taxation Code. The activities referred to in that section relate to the activities of the “person” by whom the assets were held or used and not to the activities of a segment of a total business enterprise. The computer department was closely related to and provided services in support of the activities of the overall banking enterprise carried on by the bank and were consistently and exclusively used in the furtherance of the banking activities for which a permit is required. The activities of the computer department were not activities which were separate and distinct from the activities of the bank but rather were an integral segment of the single overall business enterprise. The transfer of the assets of the computer department was

not a transfer of the assets of a separate business enterprise and did not constitute all or substantially all of the assets of the "person" by which the assets were held or used.

A retailer cannot create an exemption for specific transactions as isolated or occasional sales by departmentalizing its business. (Northwestern Pacific Railroad Company v. State Board of Equalization, 21 Cal (2) 529).

In view of the above, we must conclude that the transfer of the assets constituted a taxable sale properly includible in the measure of the tax.

2. Delivery Charges in Connection With the Sales of Personalized Checks.

Orders for the personalized checks are placed by the depositors with the bank. The bank then sends the orders to the check printers. Upon completion of the orders, the checks are mailed by the printer directly to the depositor. The printer invoices the bank for its charges plus sales tax and postage which are separately stated on the billing to the bank. The bank debits the depositor's account with a lump-sum amount including the sales tax paid to the printer and the postage charges. Notification of the debit to the account is sent to the depositor by the bank. The debit memorandum contains only a lump-sum amount with no separate statement on the debit document of tax or postage.

Since the postage charges are not separately stated in the document received by the depositor, the audit has included the charges for postage as subject to tax pursuant to regulation 1628. No tax is billed to the bank by the printer on the postage charges.

Petitioner has contended that it is not the seller of the checks but merely an agent of the depositor in these transactions. In the alternative, if found to be the seller, the delivery charges are exempt.

At the hearing no argument or evidence was presented in support of the contentions.

The board's position that banks, dealing in personalized checks in the manner identical to that of petitioner, are retailers of the checks is adequately supported by case law (see Bank of America v. State Board of Equalization, 209 C A (2) 780). The court in the above case considered and rejected the contention that the bank was acting as an agent of the depositor in its personalized check transactions.

We conclude that petitioner is properly classified as a retailer in connection with the sales of the personalized checks to its depositors and is required to collect the use tax on the sales price of the checks sold (Bank of America v. State Board of Equalization, supra).

"Sales price" means the total amount for which tangible personal property is sold without any deduction on account of the cost of transportation of the property except that it does not include separately stated charges for transportation from the retailer's place of business or other

point from which shipment is made directly to the purchaser (Section 6011, Revenue and Taxation Code).

The debit memoranda issued by petitioner to its customers (depositors) contain only a single lump-sum amount. No separate statement of the transportation charges as required for exemption appears.

We conclude that the transportation charges were properly included in the measure of the tax.

Recommendation

It is recommended that the determination be redetermined without adjustment.

Joseph Manarolla, Hearing Officer

7/2/73
Date

REVIEWED FOR AUDIT

Principal Tax Auditor

7-6-73
Date