

**557.0233**

BT-169 REV. 2 (4-63)  
PRELIMINARY HEARING REPORT

STATE BOARD OF EQUALIZATION  
DEPARTMENT OF BUSINESS TAXES

Report of Hearing Officer Robert H. Anderson/vs (4/11/68)

Taxpayer REDACTED TEXT Account Number REDACTED TEXT

Form Number 432

Date of Billing 10-10-66

Period (From 11-1-63  
(To 3-31-66)

Date of Hearing March 8, 1968 Time 1:30 p.m. Place San Francisco

Appeared on behalf of Petitioner

REDACTED TEXT

Board of Equalization Representatives REDACTED TEXT

Comments and Recommendations

**PROTESTED ITEMS:**

A. Freight charges subject to use tax: \$6,315

B. Purchases by joint venture subject to use tax: \$78,155

**CONTENTIONS OF PETITIONER:**

A. When the seller shipped lumber to the joint venture in San Francisco freight collect, the title to the lumber automatically passed in Oregon before the freight charges were assessed.

B. The equipment was a contribution to capital of the joint venture.

**REPORT ON FACTS:**

Petitioner, hereinafter REDACTED TEXT, is a joint venture of two Washington corporations. It was formed for the purpose of submitting a bid to the REDACTED TEXT for the construction of the REDACTED TEXT in San Francisco, and for the performance of the work if awarded the contract.

The joint venture agreement provided that the venturers were to share contributions, expense, profits and/or losses on a fifty-fifty basis. The agreement also provided "...all necessary working capital when and as required for the performance...shall be furnished proportionately on a fifty-fifty basis."

The agreement also provided that the venturers were to provide approximately equal amounts of equity capital and equipment as their investment in the venture, and if any imbalance between their equity accounts should arise, it would be adjusted by exchange of cash between either or both venturers and the joint venture.

The representative of petitioner, REDACTED TEXT, stated that the construction job was such that, during its course, various items of equipment would be furnished by the tow corporations and used on the job, but was not allocated to the job when construction began because it was not needed at the time.

The venturers adopted an Intra Company Equipment Use Charge (agreed equipment equity) schedule to allocate contributions of equipment and their value. The schedule was prepared in the form of rental rates and the project transmitted to each of the corporations a "rental" breakdown each month showing amounts charged or contributed.

Item A, freight charges, is a charge for delivery of lumber purchased from an Oregon firm and used on the job. The lumber was purchased for a delivered price f.o.b. jobsite in San Francisco. The amount in question, \$6,315, represents freight charges paid by REDACTED TEXT and which was deducted from the seller's invoice and netted out of reported purchases subject to use tax. REDACTED TEXT contends that it was their intent to take title in San Francisco, but the seller shipped the lumber contrary to instructions on the purchase order by shipping freight collect. It was asserted that the petitioner and the seller had some "heated" arguments by telephone over the way the lumber was shipped and it came to appoint where they were going to cancel future orders unless the seller ceased shipping f.o.b. Portland, Oregon. When the seller ceased shipping f.o.b. Portland, the petitioner reported and paid use tax on the total price without netting the freight charges.

REDACTED TEXT also stated that when a claim developed following a shipment wherein REDACTED TEXT had to pay freight charges, the burden of processing the claim was on REDACTED TEXT. REDACTED TEXT said it was always REDACTED TEXT intent to take title in San Francisco because they did not want the bother of processing claims against the carrier.

#### CONCLUSIONS:

Item A: The lumber was sold for a delivered price and the freight charges should not be netted from the measure of use tax. The petitioner ordered the lumber f.o.b. jobsite, at a price which included the delivery cost. The seller shipped the lumber freight collect and invoiced the petitioner at the quoted price, including freight, and then netted out the freight because it was shipped freight collect.

Inasmuch as it was sold for a delivered price and invoiced at the delivered price with freight netted out, the charge for freight, no matter who paid it or to whom it was paid, was part of the sales price. The working papers contain copies of purchase orders which show the price to include freight and invoices which show the same price with freight netted out.

Item B: The parties at the outset contemplated periodical contributions of equipment to the joint venture. The equipment was contributed and used by REDACTED TEXT as needed. Any contribution of equipment did not ultimately increase either contributor's equity in the venture because it remained, by agreement, fifty-fifty. Thus, there was no consideration to the contributor paid by the venture. Accordingly, whenever equipment was moved to San Francisco and used on the job, the joint venture did not make a purchase of that equipment transferred to the venture by either of the two Washington corporations.

Item B should be reexamined for use tax liability on new materials, equipment and machinery which were acquired out of state, transferred to the joint venture, and first used in California by the joint venture. Such liability would attach even though the equipment, etc., was a so-called "original" contribution to the venture.

RECOMMENDATION:

Redetermine and reaudit with no adjustment to item A. Reexamine all contributions of machinery and equipment and assert use tax on anything new and first used by REDACTED TEXT in California, regardless of when it was contributed to the REDACTED TEXT venture.

Reaudit and adjustments, if any, to be made by San Francisco auditing.

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Robert H. Anderson, Hearing Officer