

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of the Petition for) DECISION AND RECOMMENDATION  
Redetermination Under the Sales )  
and Use Tax Law of: )  
 ) No.  
 )  
Petitioner )

The preliminary hearing on the above taxpayer's petition for redetermination was held on January 8, 1985, in Santa Rosa, California.

Hearing Officer: John B. Adamo

Appearing for Petitioner: REDACTED TEXT

REDACTED TEXT

Appearing for the Board: Dennis Robbins  
Tax Auditor

Protested Item

The protested tax liability for the period April 1, 1981 through December 31, 1983 is measured by:

| <u>Item</u>  | <u>State, Local and County</u> |
|--|--------------------------------|
| Disallowed sales of truck bodies<br>claimed as exempt per Section 6388.5 | \$63,771                       |

Contentions of Petitioner

1. The sale of truck rock bodies should be treated as exempt transactions under Revenue and Taxation Code Section 6388.5.

2. In the alternative, the particular sales in issue constituted exempt sales in interstate commerce.

Summary

Petitioner is a corporation engaged in business as a manufacturer of heavy duty truck rock bodies and trailers. A prior audit of petitioner was conducted for a period ended March 31, 1980.

The units manufactured and sold by petitioner consist of three units: (i) a truck rock body, also called a dump body, which is mounted on the purchaser's truck and which is operated by hydraulic power; (ii) a trailer chassis; and (iii) a trailer or transfer box which rests upon the trailer chassis. The three units are designed to work as an integral system. When loads are carried in both the dump body and transfer box, at the time of unloading, the trailer chassis is detached from the truck and the load in the dump body is dumped first. The trailer chassis is then reattached to the truck and the transfer box is pulled off the trailer chassis and slides into the dump body whereupon the second load can then be dumped. This system allows for transporting greater loads and more efficient unloading. The trailer or transfer box cannot be operated except in conjunction with the dump body. The dump body, on the other hand, can be operated by itself.

The subject measure of tax reflects two sales which transpired in 1983. The first was an August 1983 sale of one integral system to REDACTED TEXT ( ) of REDACTED TEXT the second was an October 1983 sale of five units to REDACTED TEXT. Petitioner claimed the entire gross receipts derived from these transactions as exempt sales of trailers pursuant to Revenue and Taxation Code Section 6388.5. As further explained below, the audit staff concluded that the dump bodies did not constitute "trailers." The portion of the sales price attributable to the dump bodies was determined by an analysis of petitioner's purchase records.

Petitioner contends that the sale of the dump bodies is exempt for two distinct reasons. First, petitioner asserts that the dump body is an integral part of the entire "trailer configuration," i.e., the 3-unit system. Since dump bodies are not sold separately, but only as part of the entire system, petitioner argues that they should be considered as "trailers" for sales tax purposes. In this context, petitioner acknowledges that the dump bodies can be utilized without the transfer boxes but that the latter can only be used in conjunction with the dump bodies.

Petitioner's alternative argument is that the subject transactions constituted exempt sales in interstate commerce. The petitioner record reveals that REDACTED TEXT purchased a cabin chassis from a Ford truck dealer in Sacramento and the transfer dump system from petitioner. The cabin chassis was sent to petitioner's REDACTED TEXT California location for installation of the 3-piece transfer dump system and then returned to the Sacramento truck dealer. The latter then transported the entire unit (truck cabin and transfer dump system) to Oregon where it was delivered to the purchaser. The Sacramento truck dealer claimed the sale of the cabin chassis as an exempt in interstate commerce. With respect to the October 1983 sale to REDACTED TEXT, petitioner's representatives have related that REDACTED TEXT issued two purchase orders: one to petitioner for the transfer dump systems, and a second to REDACTED TEXT an REDACTED TEXT dealer of the cabin chassis. The cabin manufacturer REDACTED TEXT shipped the cabins directly to petitioner for installation of the hydraulic system and attachment of the transfer dump units. Upon completion of this work, REDACTED TEXT sent drivers to REDACTED TEXT take delivery of the units and drive them to, REDACTED TEXT location for pre-delivery service, after which the units were placed in service by REDACTED TEXT

#### Analysis and Conclusions

1. At the time of the sales in issue, Revenue and Taxation Code Section 6388.5 provided as follows:

"Notwithstanding Section 6388, where a new trailer or semitrailer with an unladen weight of 6,000 pounds or more which has been manufactured outside this state is purchased for use without this state and is delivered by the manufacturer or dealer to the purchaser within this state, and such purchaser drives or moves the vehicle to any point outside this state within 30 days from and after the date of delivery or whenever a new trailer or semitrailer with an unladen weight of 6,000 pounds or more which has been manufactured in this state is purchased for use without this state and is delivered by the manufacturer or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 75 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1

(commencing with Section 6001), Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251) the gross receipts from the sale of and the storage, use or other consumption of the vehicle within the state, provided that the purchaser furnishes the following to the manufacturer: or dealer:

(a) Written evidence of an out-of-state license and registration for the vehicle.

(b) The purchaser's affidavit attesting that he or she purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce.

(c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of either 30 days or 75 days of the date of the delivery of the vehicle to him or her."

In relevant part, the term "trailer" is defined by Vehicle Code Section 630 as follows:

"A 'trailer' is a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon any other vehicle..."

The dump bodies in issue do not qualify as trailers" under the foregoing definition. Specifically: (i) they do not rest on a structure of their own, but rather on that of the cabin chassis; (ii) they are not drawn, but carried by a motor vehicle; and (iii) their weight rests upon another vehicle, i.e., the truck. It is our conclusion that by virtue of its attachment to a truck, such a dump body constitutes part of the truck. This conclusion is supported by petitioner's own literature which refers to the dump body as a "truck body," whereas the transfer box is referred to as a "trailer body."

2. Section 6091 of the Revenue and Taxation Code provides that it shall be presumed that all gross receipts

are subject to tax until the contrary is established. The sales tax generally applies to a sale of property which is delivered to the purchaser or his representative in this state even though it is immediately transported to a point outside this state. (Sales and Use Tax Regulation 1620(a)(3)(A).) The sales tax is not applicable, however, where the retailer completes a sale by making delivery to the purchaser at a point outside this state. (Regulation 1620(a)(3)(B).)

Sales and Use Tax Regulation 1628(b)(3)(D) provides, in relevant part, as follows:

"Unless explicitly agreed that title is to pass at a prior time, the sale occurs at the time and place at which the retailer completes his performance with reference to the physical delivery of the property, even though a document of title is to be delivered at a different time or place..."

With respect to the sale to REDACTED TEXT, petitioner completed its performance with respect to the physical delivery of the transfer dump units upon delivery of those units to REDACTED TEXT's drivers in California. Title accordingly transferred in California and the fact that the units were immediately transported to Arizona is insufficient to qualify those sales as exempt sales in interstate commerce. (Sales and Use Tax Regulation 1620(a)(3)(A).) The same analysis is applicable with respect to the REDACTED TEXT transaction. In that case, petitioner delivered the transfer dump unit purchased by REDACTED TEXT to the Sacramento Ford truck dealer. The truck and transfer unit were subsequently shipped out of state by the truck dealer. The Board has previously held in similar such circumstances that the dealer is the representative of the purchaser. (See Business Taxes Law Guide Annotations 325.0800, Nov. 23, 1953 and 325.0840, Sept. 1, 1953.) There is no reason to depart from that precedential authority in this case. The transfer dump unit was delivered to the truck dealer in California pursuant to the instructions of REDACTED TEXT. The truck dealer accordingly acted as REDACTED TEXT's representative with respect to the transfer unit purchase and the sale in issue cannot qualify as an exempt sale in interstate commerce. (Sales and Use Tax Regulation 1620(a)(3)(A).)

Recommendation

Redetermine without adjustment.

John B. Adamo  
John B. Adamo, Hearing Officer

3-8-85  
Date