OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 18011850
ADLER TANK RENTALS, LLC	CDTFA Case ID: 933580

OPINION

Representing the Parties:

For Appellant:	Joseph A. Vinatieri, Attorney Patricia Verdugo, Attorney David Whitney, Vice President – Controller, McGrath RentCorp and Adler Tank Rentals
For Respondent:	Courtney L. Daniels, Tax Counsel III Jason Parker, Chief of Headquarters Ops. Scott Claremon, Tax Counsel IV

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561, Adler Tank Rentals, LLC (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA).[1] CDTFA's decision denies appellant's timely petition for redetermination of a Notice of Determination (NOD) dated December 24, 2015. The NOD is for tax of $175,001.01, plus applicable interest, for the period July 1, 2010, through December 31, 2013 (liability period).

Office of Tax Appeals (OTA) Administrative Law Judges Andrew J. Kwee, Suzanne B. Brown, and Josh Lambert held an oral hearing for this matter in Sacramento, California, on Wednesday, May 25, 2022. At the conclusion of the hearing, the record was held open for additional briefing. The additional briefing period concluded on August 4, 2022, and this matter was submitted for a decision.

[1] Sales and use taxes were formerly administered by the State Board of Equalization (board). In 2017, functions of the board relevant to this case were transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to acts or events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

ISSUES

1. Whether the containers in question qualify as mobile transportation equipment (MTE).[2]
2. Whether appellant is entitled to a bad debt deduction.

FACTUAL FINDINGS

1. Appellant is a California-based lessor of storage containers for use in storing hazardous and non-hazardous liquids and solids.
2. Appellant leases the containers to in-state and out-of-state customers. The customers store and use the containers at the customer's in-state or out-of-state location.
3. The containers are transported to and from the customer's location over public highways.
4. The average rental term is three months.
5. Appellant purchased its container inventory ex-tax,[3] for purposes of leasing.
6. Appellant filed sales and use tax returns with CDTFA reporting use tax measured by rental receipts in the quarterly reporting period when the containers were first placed in rental service.
7. When leasing containers to in-state customers, appellant collected use tax measured by rental receipts and remitted it to CDTFA.
8. When leasing containers to out-of-state customers, appellant recorded the lease as nontaxable, and did not collect or remit use tax.
9. For some leases, the customer is responsible for pickup and return of the containers to appellant's location in California, and in other instances appellant is responsible for transporting the container to and from the customer's location. Under either scenario, the customer is required to clean and empty the container before returning it to appellant.
10. When appellant was responsible for transporting the containers, appellant separately charged the customer for transportation.

[2] During the prehearing conference, the parties agreed to use the term "equipment" to refer to the property at issue. Witness testimony also referred to the property as equipment. For ease of analysis, and to avoid the possible appearance of prejudging the issue (i.e., whether it is mobile transportation equipment), we refer to the property collectively as "containers." We note that this is consistent with the admitted evidence because some of appellant's exhibits refer to the property at issue as containers.

[3] We use the term "ex-tax" to mean without payment of California sales tax reimbursement or use tax to the supplier or CDTFA at the time of purchasing the containers.

11. Upon audit, CDTFA examined appellant's rental inventory. For purposes of this appeal, the parties broadly categorize the containers into three groups of rental property: (1) large tanks; (2) small tanks; and (3) boxes.

    a. Large tanks. The facts pertinent to the analysis of the large tanks are as follows:

        i. A single rear axle with a set of two wheels is permanently affixed to the base of large tanks. The sides of the tanks include a stairwell and catwalk.

        ii. Large tanks are rated and designed for transportation and movement over substantial distances at highway speeds.

        iii. The large tanks are only designed and rated for movement while empty.

        iv. Some large tanks have an open top, and others have a closed top and insulated tank design.

        v. The large tanks do not have an independent propulsion system and can only be transported or moved while coupled to a heavy-duty winch truck or similar type of semi-truck or tractor.

        vi. The large tanks are not designed to transport persons or property for any distance.

        vii. Structural damage or injury may result if any contents are in the large tanks during transportation.

        viii. The large tanks are classified as Special Mobile Equipment within the meaning of Vehicle Code section 575. The large tanks display an identification plate for Special Mobile Equipment issued by the California Department of Motor Vehicles (DMV). The large tanks are exempt from registration with DMV pursuant to Vehicle Code section 4010.

    b. Small tanks.

        i. Small tanks do not contain any wheels capable of transporting or moving the tank for substantial distances or on a public highway.

        ii. Small tanks can only be transported or moved over substantial distances at highway speeds when attached to a trailer or other type of wheeled transportation equipment.

        iii. Small tanks are only designed and rated for movement while empty.

        iv. Small tanks do not have an independent propulsion system.

v. The small tanks are not designed or authorized under the terms of the lease to transport persons or property for any distance.

vi. Small tanks are not permanently affixed to any wheeled transportation equipment, chassis, or trailer. Any affixation for purposes of transportation is temporary in nature.

c. Boxes.

i. Boxes do not contain any wheels capable of transporting or moving the box for substantial distances or on a public highway.

ii. Boxes can only be transported or moved over substantial distances at highway speeds when attached to a trailer or other type of wheeled transportation equipment.

iii. Boxes are designed for movement while empty or full.

iv. Some boxes are leased by customers for purposes of transporting materials to a waste facility for disposal.

v. The boxes do not have an independent propulsion system.

vi. The boxes are designed and authorized under the terms of the lease to transport hazardous waste for substantial distances to a disposal facility.

vii. The process for transporting a box involves winching it to the back of a tractor-trailer for transportation to a waste facility.

viii. The boxes are not permanently affixed to any wheeled transportation equipment, chassis, or trailer. Any winching for purposes of transportation is temporary in nature.

12. CDTFA audited appellant for the liability period. Upon audit, CDTFA determined that all of appellant's containers constitute MTE. As such, CDTFA determined that California use tax was due on appellant's out-of-state leases measured by the fair rental value of the containers.

13. CDTFA determined that appellant's charges for transporting the containers to and from the customer's location are nontaxable, and they are not at issue in this appeal.

14. CDTFA examined appellant's asset activity report for 2012. The assets (containers) appellant acquired in 2012 consisted of 9 large tanks, and 22 boxes. With respect to leases of containers placed in service during 2012, CDTFA determined that appellant

collected out-of-state lease receipts of $35,194, and that this amount represented 3.82 percent of appellant's reported taxable leases receipts of $922,304 for 2012. CDTFA applied the 3.82 error rate to appellant's reported taxable lease receipts for the liability period ($23,956,723) to calculate an unreported measure of $952,317 for out-of-state leases of MTE (identified as audit item 2). All the errors in the test period were allocable to out-of-state leases of large tanks.

15. In addition, with respect to in-state leases of containers, appellant claimed a $483,802 bad debt deduction during the fourth quarter of 2013 (4Q13). The bad debt deduction pertained to 436 container leases to customers located in California. CDTFA disallowed appellant's $483,802 deduction in its entirety on the basis that appellant was the consumer of the containers and, as such, a bad debt deduction was inapplicable (identified as audit item 4).[4]

16. On December 24, 2015, CDTFA issued the NOD to appellant for the liability disclosed by audit. Appellant timely petitioned the NOD.

17. CDTFA denied the petition in a decision dated May 3, 2017. This timely appeal followed.

18. During the oral hearing, the parties stipulated that OTA could accept the following facts as undisputed:

    a. CDTFA agrees that to the extent, if any, OTA determines the containers constitute tangible personal property, and not MTE, that California use tax would not apply to appellant's out of state leases, and appellant would have correctly reported those leases to CDTFA.

    b. Appellant agrees that to the extent, if any, OTA determines the containers constitute MTE, California use tax would apply to the out-of-state rentals as determined by CDTFA.

    c. It is undisputed that appellant did not pay tax or tax reimbursement to its vendors at the time of purchasing the containers.

    d. It is undisputed that the potential applicability of R&TC section 6406, pertaining to credits for tax paid to another state, is not at issue in this appeal.

[4] There were two additional audit items: a measure of $37,142 (unreported purchases subject to use tax) for audit item 1; and $628,904 (reporting errors) for audit item 3. These two audit items are not at issue in this appeal.

19. During the oral hearing, appellant's sole witness, its Vice President – Controller, provided testimony about the containers, which is summarized, in pertinent part, below. CDTFA contended that there was insufficient evidence to determine whether small tanks are physically incapable of holding a small amount of property during transport without damage to the tank. CDTFA did not otherwise dispute any of the testimony summarized below. OTA accepts, as fact, the following undisputed testimony from appellant's witness:

    a. All of appellant's large tanks include a warning sign[5] which states as follows:

    DANGER
    DO NOT LIFT FROM REAR OF THE TANK
    DO NOT LIFT WITH CONTENTS IN TANK
    LIFT FROM FRONT OF THE TANK OR FROM LIFTING POINTS ON ROOF
    INJURY AND STRUCTURAL DAMAGE COULD RESULT IF CONTENTS ARE IN THE TANK WHEN LIFTING

    b. Appellant's small tanks and boxes do not include this warning sign.
    c. All of appellant's tanks are designed to be, and are, transported empty to and from the customer's location for short-term rentals, typically of three months in duration.
    d. The large tanks have two tires and a rear axle on one end of the tank to facilitate transportation on public highways.
    e. The small tanks do not have any wheels and must be temporarily affixed to a trailer for transport.
    f. Appellant's tanks (whether large or small) are not permanently affixed to a semi-trailer truck, tractor, or trailer (as applicable) during transport.
    g. Appellant requires that its tanks (large and small) must be cleaned and emptied prior to transport.
    h. Appellant's tanks are only designed to be transported empty. The tanks are not designed to be transported while storing liquid or other contents.
    i. Transporting a large or small tank with hazardous contents in the tank is likely to result in hazardous materials spilling on public highways.[6]

[5] A copy of the sign was marked for identification as Appellant Exhibit 17, and admitted into evidence.

j. All of appellant's boxes are designed to be transported while containing hazardous waste material for disposal. The boxes do not have wheels and must be affixed to a trailer for transport. The boxes are never permanently affixed to the trailer.

k. Approximately 80 percent of appellant's rental fleet consists of tanks, and the remaining 20 percent consists of boxes.

20. During the oral hearing, appellant clarified its legal position as follows: (1) tanks are not MTE because they are not capable of transporting persons or property; and (2) tanks and boxes are not component parts of MTE because they are only temporarily attached to MTE (e.g., a semi-trailer truck) when they are transported to and from the customer's location.

21. It is undisputed that the equipment used to transport appellant's containers (e.g., a semi-trailer, tractor, or trailer) constitute MTE.

22. During the oral hearing, CDTFA clarified its legal position as follows: (1) a large tank is MTE because it is designed to transport itself over substantial distances at highway speeds, and it is hitched to a semi-trailer truck which is MTE; (2) a small tank is MTE because it is affixed as a component part of MTE, and there is insufficient evidence to conclude that it is physically incapable of transporting property since there are no warning signs posted on the small tanks; and (3) a box is MTE because it transports property over substantial distances and is affixed as a component part of MTE (semi-trailer, tractor, or trailer) during such transport.

23. With respect to the bad debt deduction, CDTFA stated its position that, if all the boxes were determined to be MTE, and all the tanks were determined to not be MTE, CDTFA would agree to an allocation of 80 percent of the bad debt deduction to the tanks, and the remaining 20 percent to the boxes.

24. In post-hearing briefing, appellant stated that it agreed with CDTFA's position regarding allocation of the bad debt deduction, and appellant has no objection to allocating the bad debt deduction in the same ratio as boxes to tanks in rental inventory if OTA determines the boxes are MTE, and the tanks are not MTE.

[6] The witness also testified that this would be an illegal use of the tanks in California. We make no finding on the legality of using appellant's large or small tanks to transport hazardous waste on a public highway because it is not relevant to the outcome of this appeal.

DISCUSSION

Issue 1. Whether the containers in question qualify as MTE.[7]

California imposes sales tax on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt or excluded from taxation by statute. (R&TC, §§ 6012, 6051.) The law creates a statutory presumption that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.) The retailer has the burden of proving that a sale of tangible personal property is not a retail sale unless the retailer timely and in good faith obtains a resale certificate from the purchaser. (R&TC, § 6091; Cal. Code Regs., tit. 18, § 1668(a).) It is the retailer's responsibility to maintain complete and accurate records to verify the accuracy of any return made and to make them available to CDTFA for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).)

When CDTFA is not satisfied with the amount of tax reported by the taxpayer, or in the case of a failure to file a return, CDTFA may determine the amount required to be paid on the basis of any information which is in its possession or may come into its possession. (R&TC, §§ 6481, 6511.) In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Talavera*, 2020-OTA-022P.) Once CDTFA has met its initial burden, the burden of proof shifts to the taxpayer to establish that a result differing from CDTFA's determination is warranted. (*Ibid*.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid*.)

For purposes of the Sales and Use Tax Law, a taxable "sale" or "purchase" in this state includes any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of MTE. (R&TC, § 6006(g)(4); R&TC, § 6010(e)(4).) The tax on a lease of tangible personal property, other than MTE, is measured by the rentals payable for any rental period during which the leased property is located in this state. (Cal. Code Regs., tit. 18, § 1660(c)(1).) As such, tax does not apply to an out-of-state lease of tangible personal property, other than MTE. (*Ibid*.)

[7] During the prehearing conference, the parties and OTA agreed that the issues would be phrased and addressed in this manner. During the oral hearing, OTA asked the parties for input on whether to rephrase issue 1 to the following: whether California use tax applies to appellant's out-of-state leases of equipment. Appellant objected to this rephrasing based on the prior agreement at the prehearing conference. OTA agreed to organize the issue statements as the participants agreed upon at the prehearing conference.

With respect to leases of MTE, the sale to the lessor is considered a taxable retail sale and the lessor is the consumer of the MTE. (Cal. Code Regs., tit. 18, § 1661(b)(1).) Thus, either sales tax applies to the sale of MTE to a lessor, or use tax applies on the lessor's use of the MTE in this state for leasing purposes. (Cal. Code Regs., tit. 18, § 1661(b)(1).) If the use of MTE purchased without payment of tax is limited to leasing the MTE, the purchaser may elect to report and pay its use tax liability on the fair rental value of the MTE. (R&TC, § 6094(d).) Fair rental value generally means any rentals required under the lease. (Cal. Code Regs., tit. 18, § 1661(b)(2)(A).) Such election must be made on or before the due date of the return for the period in which the equipment is first leased, otherwise use tax is imposed on the lessor's entire purchase price for the MTE. (R&TC, § 6094(d).) When a timely election to pay tax on the fair rental value of MTE is made, use tax must thereafter be paid with the lessor's return for each reporting period, measured by fair rental value, regardless of whether or not the MTE is thereafter located within this state. (Cal. Code Regs., tit. 18, § 1661(b)(2).) In other words, an election to pay tax on fair rental value is irrevocable.

The two-prong test for MTE

CDTFA promulgated California Code of Regulations, title 18, (Regulation) section 1661, which sets forth the following definition for MTE:

> The term [MTE] includes only equipment for use in transporting persons or property for substantial distances, such as . . . trucks (except "one way rental trucks"), truck tractors, truck trailers, dollies, bogies, chassis, reusable cargo shipping containers, aircraft and ships, and tangible personal property which is or becomes a component part of [MTE].

(Cal. Code Regs., tit. 18, § 1661(a)(1).) In summary, MTE includes: (1) equipment for use in transporting persons or property for substantial distances, including specifically listed equipment (first prong); and (2) tangible personal property which does not independently meet the definition of MTE set forth in the first prong but which, by nature of its attachment to MTE, becomes a component part of other property meeting that definition of MTE (second prong).

With respect to the second prong, it is undisputed that the containers are required to be transported by means of a tractor, semi-truck, or winch truck. Notably, MTE includes trucks, truck tractors, truck trailers, chassis, reusable cargo shipping containers, and component parts of MTE. (R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) Thus, all the containers at issue are transported by means of temporary affixation to MTE. Therefore, a central issue with respect

to the second prong is whether the containers are a component part of MTE by nature of their attachment to the MTE. This Opinion will address each category of containers in turn.

Large Tanks

With respect to the first prong, CDTFA cites Business Taxes Law Guide (BTLG) Annotation 335.0087 (5/24/77) and contends that this annotation stands for the proposition that equipment capable of transporting itself (i.e., property) over substantial distances meets the definition of MTE.[8] We find this argument unpersuasive under the facts of this case. To be considered MTE under the first prong, the equipment at issue must be capable of transporting "persons" or "property," other than itself, for substantial distances. (R&TC, § 6023.) The cited annotation concluded that cranes mounted on trucks (truck cranes) and which travel on public highways meet the definition of MTE. However, the annotation noted that the trucks carry property (i.e., the cranes) as well as persons (i.e., the driver of the truck) over public highways. At the outset, this annotation is distinguishable from the facts at hand because "trucks" are statutorily included in the definition of MTE. (R&TC, § 6023.) Thus, that annotation dealt with a scenario involving a crane mounted on MTE, and which was thus a component part of MTE (which is discussed under the second prong, below). In summary, BTLG Annotation 335.0087 stands for the proposition that either a driver (i.e., a person), or tangible personal property which is or becomes a component part of MTE (i.e., property), may be considered the qualifying item being transported for purposes of determining whether the equipment doing the transporting is for use in transporting persons or property for substantial distances.

Here, appellant's large tanks are not self-propelled and, as such, there is no driver. Furthermore, the large tanks are not registered with DMV for highway use. Finally, the large tanks are not designed for use in transporting property for any distance, the large tanks would be damaged if used for such purposes, and the terms of the lease agreement do not authorize their use for such purposes. Under these facts, appellant's large tanks are not considered equipment for use in transporting persons or property for substantial distances (first prong) and, as such, would only quality as MTE if they are considered a component part of MTE (second prong). (Cal. Code Regs., tit. 18, § 1661(a)(1).

[8] Annotations do not have the force or effect of law. (*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 25.) Nevertheless, OTA may still afford weight to an annotation. (See *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.)

With respect to the second prong, CDTFA contends that there are two possible avenues to support a finding that the large tanks are MTE: (1) the rear axle constitutes MTE, the large tank is a component part of the two wheels, and the two wheels are designed to transport the tank over substantial distances; or (2) the large tank becomes a component part of the winch truck (MTE) when transported to or from the customer's location.

We first turn to the argument that the rear axle constitutes MTE. We disagree. CDTFA has examined this issue in a number of BTLG Annotations that it published over the years. It is clear that trailers are MTE because they are specifically included in the definition of MTE. (Cal. Code Regs., tit. 18, § 1661(a)(1). Thus, in addition to the truck crane annotation discussed above, in a number of additional published BTLG annotations, CDTFA has correctly concluded that property which is attached or affixed to a trailer or similar chassis registered with DMV for use on a public highway is a component part of MTE. For example, in BTLG Annotation 335.0009 (4/5/77; 6/17/77; 2/28/78), CDTFA concluded that water purification units mounted on trailers registered with DMV, and other such equipment including cement mixers and air compressors registered with DMV for highway use, are component parts of MTE. (See also, e.g., BTLG Annotations 335.019 (7/5/78), 335.0072 (5/13/80), 335.0049 (4/26/84), & 335.0012 (8/15/90).)[9] The key element in the published BTLG annotations (all addressing portable equipment, which is not, in itself, designed for transportation of persons or property) is that the portable equipment found to qualify as a component part of MTE was permanently affixed to a trailer, semi-trailer, or other MTE, and the underlying MTE was registered for use in transporting persons or property over the public highway (see footnote 9). In other words, to meet the statutory definition of MTE, the property in question must either be MTE as defined under the first prong (above), or a component part of MTE. (R&TC, § 6023.) In the instant case, the large tanks are not permanently affixed to a trailer or other MTE. The only item at issue here is a single integrated piece of property: a large tank with fully integrated, built-in axle and two

[9] In the referenced BTLG Annotations, CDTFA concluded as follows:

- In BTLG Annotation 335.0019 (7/5/78), CDTFA concluded that a feed wagon mounted on a truck chassis is a component part of the MTE.
- In BTLG Annotation, 335.0072 (5/13/80), CDTFA again concluded that trailer-mounted air compressors designed for movement over substantial distances are a component part of the MTE.
- In BTLG annotation 335.0049 (4/26/84), CDTFA concluded that mobile CT scan units are a component part of MTE because they are permanently affixed to a semi-trailer, which is MTE.
- In BTLG annotation 335.0012 (8/15/90), CDTFA concluded that trailer-mounted concrete pumping equipment is a component part of MTE.

wheels. However, unlike a trailer or semi-trailer (which is MTE), appellant's large tanks are not registered for use in transporting persons or property over substantial distances.

Here, it is not disputed that the large tanks qualify as "special mobile equipment" within the meaning of Vehicle Code section 575. That definition means vehicles which are "not designed or used primarily for the transportation of persons or property, and only incidentally operated or moved over a highway." (Veh. Code, § 575.) It is further undisputed that the large tanks are exempt from registration with DMV pursuant to Vehicle Code section 4010, and are not in fact so registered with DMV.

Had appellant separately purchased a trailer subject to vehicle registration requirements with DMV, and thereafter permanently affixed the large tank to the trailer, the large tank would become a component part MTE (i.e., the trailer), just as was the case in the BTLG annotations addressing the various types of portable equipment discussed above. Appellant, however, did not do this. Instead, appellant purchased large tanks whose existing design included an integrated rear axle. These large tanks do not include any trailer component. Because of the nature of the large tanks, it is not possible to identify a DMV-registered trailer or chassis component and conclude that the large tanks are a component part of such MTE. Instead, our determination must be made based on examining the entirety of the container as a single integrated unit – a large tank with two rear wheels and an axle, which is exempt from DMV registration pursuant to Vehicle Code section 4010.

It is further undisputed that appellant's large tanks with wheels are exempt from DMV registration on the basis that the large tanks are not designed or used primarily for the transportation of persons or property within the meaning of the Vehicle Code. It is also undisputed that the large tanks are not capable of transporting persons or property over any distance. As such, we find that appellant's large tanks are not MTE, and are not a component part of any MTE.

With respect to the second prong, CDTFA's remaining contention is that the large tanks become a component part of the winch trucks when transported on public highways, and the winch trucks are DMV-registered MTE. It is not necessary for equipment to contain wheels or even an independent propulsion system to be considered MTE. For example, reusable cargo shipping containers are for use in transporting property for substantial distances and, as such, are considered MTE, even though they must be used in conjunction with other property during

transport. (Cal. Code Regs., tit. 18, § 1661(a)(1).) However, to meet the definition of MTE, it is necessary for equipment to be designed to transport persons or property over substantial distance, or to become a component part of MTE. (*Ibid*.) Thus, it first bears reminding that the property at hand (a large tank) is not designed to transport persons or property over any distance and, as such, does not independently qualify as MTE under the first prong. Instead, the only avenue to conclude the large tanks are MTE would be based on the nature of the tank's attachment to a winch truck, or tractor, or semi-truck, for transport. We believe that temporarily hitching property to MTE solely for purposes of transport is not sufficient to transform the property into a component part of MTE. If that were true, then it would lead to absurd results. For example, under such a theory, manufactured homes could be considered MTE because they are or can be transported on public roadways by semi-truck. We do not believe that the requirement that it "becomes a component part of MTE," within the meaning of Regulation section 1661, would generally mean or include property which, as here: (1) is only temporarily attached to MTE solely for transport and must be detached from any MTE prior to use; (2) is not registered as a vehicle or trailer with DMV, and (3) is not designed or used to transport persons or property for substantial distances.

In summary, we find that appellant's large tanks do not qualify as MTE.

Small Tanks

With respect to the first prong (whether the equipment is for use in transporting persons or property for substantial distances), CDTFA contends that appellant failed to establish that the small tanks are not capable of transporting persons or property and, as such, are MTE because they are essentially the same as a shipping container, which is MTE.

Here, appellant's witness testified that the small tanks cannot be used to transport any persons or property. Furthermore, none of the product descriptions in the evidentiary record mention that small tanks are capable of transporting property; instead, the sole advertised purpose is storage. Appellant does lease containers designed for transporting hazardous waste; however, those were separately categorized as boxes (discussed below). The small tanks serve a separate purpose (storage, as opposed to transport). Finally, it appears to be undisputed that appellant, through its lease terms, does not allow its customers to use the small tanks to transport any persons or property. Under these facts, we find that the small tanks are not for use in transporting persons or property over substantial distances.

With respect to the second prong, CDTFA contends that the small tanks are MTE because they are loaded and affixed to MTE, a semi-trailer, for transport. We have already addressed this contention, above. For all the reasons explained above, we do not believe that the requirement that equipment "becomes a component part of MTE," within the meaning of Regulation section 1661, would generally mean or include property which, as here: (1) is only temporarily attached to MTE solely for transport and must be detached from any MTE prior to use; (2) is not registered as a vehicle or trailer with DMV; and (3) is not designed or used to transport persons or property over substantial distances. In addition, our conclusion in this case is consistent with BTLG Annotation 335.1250 (10/7/83), which concluded that mobile equipment, a carpet cleaning machine, which is temporarily attached to a truck for transport and must be unloaded prior to being placed in service is not a component part of MTE.

In summary, we find that appellant's small tanks do not qualify as MTE.

Boxes

With respect to the first prong (whether the equipment is for use in transporting persons or property for substantial distances), CDTFA contends that the boxes are designed and used to transport hazardous waste for substantial distances and are a component part of MTE. As discussed above, it is not necessary for equipment to contain wheels to be considered MTE, so long as it is designed to transport persons or property for substantial distances. (Cal. Code Regs., tit. 18, § 1661(a).) Furthermore, reusable shipping containers are statutorily included in the definition of MTE. (R&TC, § 6023.) Here, it is undisputed that appellant's reusable boxes are designed to transport hazardous waste for substantial distances for disposal. Appellant advertises the boxes for use in such purposes and does not dispute that they are used for such purposes. In BTLG Annotation 335.0015 (9/14/89), CDTFA similarly concluded that debris boxes designed to transport garbage to a disposal facility constitute MTE on the basis that they qualify as reusable cargo shipping containers and, as such, are considered MTE. Based on all the above, we find that appellant's reusable boxes are reusable shipping containers for hazardous waste and, as such, independently meet the statutory definition of MTE under the first prong, irrespective of their nature of attachment (whether permanent or temporary) to any other MTE. As such, we do not address the second prong (whether appellant's boxes are a component part of MTE).

In summary, we find that appellant's boxes are MTE.

Summary

We find that appellant's large tanks and small tanks do not qualify as MTE. We find that appellant's boxes meet the definition of MTE. The parties agree that 100 percent of appellant's liability for unreported out-of-state leases of MTE measured by $952,317.00 is allocable to large tanks. As such, we find that appellant's use tax liability for out of state leases of MTE (CDTFA audit item 2) shall be redetermined to $0.00.

Issue 2. Whether appellant is entitled to a bad debt deduction.

Retailers may generally take a bad debt deduction for amounts reported as taxable and thereafter found worthless and charged off for income tax purposes. (R&TC, §§ 6055(a), 6203.5(a); Cal. Code Regs., tit. 18, § 1642(a).) With respect to leases of MTE, the sale to the lessor is considered a taxable retail sale and the lessor is the consumer of the MTE. (Cal. Code Regs., tit. 18, § 1661(b)(1).) As such, a bad debt deduction is not applicable to lessors of MTE electing to report tax on fair rental value. The parties agree that, aside from the MTE aspect, the elements to qualify for a bad debt deduction are met under the facts of this case.

The parties further agree that if OTA were to conclude, under issue 1, that the large tanks and small tanks do not qualify as MTE, and that the boxes do qualify as MTE, then the allowable bad debt deduction would be 80 percent, and the disallowed bad debt deduction would be 20 percent. This was, ultimately, the conclusion under issue 1, above. The audit disallowed appellant's bad debt deduction in the amount of $483,802.00. As agreed to, and conceded by, the parties, based on the outcome of issue 1 (above), we find that the allowable bad debt deduction is 80 percent of $483,802.00, which is approximately $387,041.60.

HOLDINGS

1. Appellant's large tanks and small tanks do not qualify as MTE, and appellant's boxes qualify as MTE.
2. Appellant established that it is entitled to a bad debt deduction to the extent allocable to its leases of large tanks and small tanks, which the parties agree is 80 percent of the claimed $483,802 bad debt deduction.

DISPOSITION

CDTFA's action is reversed in part and sustained in part. Appellant is entitled to an adjustment measuring $952,317.00 in connection with CDTFA audit item 2 (unreported out-of-state leases of MTE), which is a full reversal of that audit item. In addition, appellant is entitled to a bad debt deduction of $387.041.60 (80 percent of $483,802.00), which is an 80 percent reversal of that audit item (audit item 4). CDTFA's action is otherwise sustained.

DocuSigned by:
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Andrew J. Kwee
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 9/29/2022