2026-OTA-303
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **KING SOLARMAN, INC.,** **dba King Solarman**	OTA Case No. 230613462 CDTFA Case ID: 3-801-775

OPINION

Representing the Parties:

For Appellant: James M. Mather, Attorney
Steven R. Mather, Attorney

For Respondent: Kevin B. Smith, Attorney
Jarrett Noble, Attorney
Jason Parker, Chief of Headquarters Ops.

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 6561 and California Code of Regulations, title 18, (Regulation) section 30103(b), King Solarman, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) denying appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on April 19, 2022.[1] The NOD is for tax of $1,381,070, plus applicable interest, and minus payments/credits totaling $900, for the period April 1, 2016, through June 30, 2019 (liability period).[2]

Office of Tax Appeals (OTA) Administrative Law Judges Andrew Wong, Sheriene Anne Ridenour, and Greg Turner held an in-person oral hearing for this matter in Cerritos, California, on December 9, 2025. At the conclusion of the oral hearing, the record was closed and this matter was submitted on the oral hearing record pursuant to Regulation section 30209(b).

ISSUE

[1] The State Board of Equalization (BOE) formerly administered sales and use taxes. On July 1, 2017, BOE administrative functions relevant to this case transferred to CDTFA. (Gov. Code, § 15570.22.) For ease of reference, when this Opinion refers to events that occurred before July 1, 2017, "CDTFA" shall refer to the BOE.

[2] CDTFA timely issued the NOD because appellant waived the otherwise applicable three-year statute of limitations and gave CDTFA until April 30, 2022, to issue the NOD. (See R&TC, §§ 6487(a), 6488.)

Whether a mobile solar unit (model KS-1300W) qualifies as mobile transportation equipment.

FACTUAL FINDINGS

1. Appellant, a California corporation, designs, manufactures, and sells/leases mobile solar units (MSUs), which appellant marketed as a cheaper, cleaner, and quieter alternative to portable diesel-powered generators.
2. Physically, MSUs consisted of two main parts: (a) a solar generator system, which included four solar panels, a battery backup, an inverter, and a charge controller (solar generator system, collectively);[3] and (b) a wheeled mobile frame to which the solar generator system was permanently bolted/attached.
3. KS-1300W is the specific MSU model at issue and its name combines appellant's initials and the amount of power (in watts) this model supplied.
4. Optional MSU accessories included video cameras or an extendable lighting tower, which were used to surveil or illuminate an area.
5. MSUs provided electrical power, lighting, and/or security at outdoor events or in open areas like parking lots, and could remotely monitor traffic, construction sites, DUI checkpoints, etc.
6. KS-1300Ws had an advertised weight between 1,700 and 3,000 pounds,[4] and dimensions of 4'2" x 7'3" (width [W] x length [L]).[5] Appellant's website indicated that an MSU "can be carried on the standard truck bed or towed by any regular SUV."
7. Appellant designed the KS-1300Ws and contracted with companies in China for the purchase or manufacture of some of its components, including the mobile frame.
8. Nothing in the record indicates that the KS-1300Ws were or must be registered with the Department of Motor Vehicles.
9. In November 2018, appellant sold 200 KS-1300Ws to Crestmark, the equipment financing division of MetaBank, for $14,500,000. For this sale, appellant neither collected sales tax reimbursement from Crestmark nor remitted sales tax to California.
10. Crestmark then leased the KS-1300Ws back to appellant, who subsequently subleased

[3] Three of the four solar panels could be folded down during transport and raised during use.

[4] Per appellant, after the liability period, advances in battery technology lowered the weight of MSUs to 1,300 pounds while boosting the potential power supply to 1,500 watts.

[5] These are the KS-1300W's dimensions when "closed," which presumably means when its solar panels and lighting tower were folded and retracted when not in use or during transport.

the KS-1300Ws to Ahern Rentals, Inc. (Ahern), of Nevada. No sales or use taxes were remitted with respect to either Crestmark's lease of the KS-1300Ws to appellant or appellant's sublease of the KS-1300Ws to Ahern.

11. In anticipation of the sale between appellant and Crestmark, a consultant prepared for the parties a report regarding the design, engineering, and production of the KS-1300Ws.

12. As relevant here, the report described the KS-1300W as: "[A] portable solar renewable energy generator system having a movable or mobile frame/platform configured to operate like a trailer. The mobile frame includes a strengthened chassis to support the weight of the [solar generator] system and also acts as a stabilizer to protect the system when in transit. Wheels have been added to the mobile frame of the structure for purposes of transporting the mobile solar system. The chassis includes a strengthened axle configuration supporting wheels on each side of the frame structure. The axle system allows for highway use and is appropriately configured to accommodate all of the components of the portable renewable energy solar generator system."[6]

13. Additionally, the report stated: "The frame is constructed out of 0.083 [inch], 0.120 [inch], and 0.188 [inch] wall steel tubing. The frame is equipped with a [d]ual axle designed to withstand 1,675 lbs. each[,] which exceeds the[ ]rating needed to support the 2,700 lb. KS-1300W." Further, "[t]he KS-1300W utilized [a] 2" AL-KO Kober towing hitch rated at 3,527 lbs.[,] which exceeds the necessary rating for this application." The KS-1300W also included taillights.

14. Many hitch equipment manufacturers use the Society of Automotive Engineers Standard (SAE J684) to classify hitches. For applications involving less than 10,000 pounds, SAE J684 divides hitch equipment into the following four classes of towing capacities or tow ratings (with corresponding duty types; maximum towing weights; and common payload examples):

    a. Class I (light duty; 2,000 pounds maximum; motorcycle and jet ski trailers);
    b. Class II (medium duty; 3,500 pounds maximum; small boat and utility trailers);

[6] Although the report refers to a component part of the KS-1300W as a "chassis," this reference differs from how Regulation section 1661(a)(3) defines that term: "[A] frame with one or more axles designed to be used in conjunction with and as a temporary support or undercarriage for a container or other van-type box." Here, the solar generator system is neither a container nor a van-type box and is permanently bolted/attached to a wheeled mobile frame. Thus, the component part of the KS-1300W that the report refers to as a "chassis" is not a "chassis" as defined in Regulation section 1661.

c. Class III (heavy duty; 5,000 pounds maximum; medium travel and utility trailers, and large boat trailers); and

d. Class IV (heavy duty; 10,000 pounds maximum; large travel and utility trailers, and automotive trailers).

15. Various California state agencies also use SAE J684 as a reference for trailer hitches and couplings via the State Administrative Manual (SAM), which serves as a resource for statewide policies, requirements, and information. Specifically, SAM section 3622.3 requires the following types of hitch equipment when installed on towing vehicles and trailers: a Class II hitch (2” ball on a 1” shank) for vehicles used to tow trailers with a gross trailer weight (GTW) up to 3,500 pounds; a Class III hitch (2” ball on a 1” shank) for vehicles used to tow trailers with a GTW from 3,500 pounds to 5,000 pounds; and either a Class IV hitch (2-5/16” ball on a 1-1/4” shank) or a pintle-and-eye-hook-type hitch for vehicles used to tow trailers with a GTW over 5,000 pounds.[7]

16. For the liability period, appellant reported total sales of $27,786,309 on its sales and use tax returns and claimed deductions for nontaxable sales for resale of $26,273,254 (which included appellant’s sale of 200 KS-1300Ws to Crestmark), nontaxable labor sales of $10,010, sales tax reimbursement included in its reported total sales of $110,058, and “other” deductions of $44,437 for shipping and freight charges, resulting in total reported taxable sales of $1,348,550.

17. Upon audit, appellant provided CDTFA with the following books and records: federal income tax returns for 2016, 2017, 2018, and 2019; bank statements, sales summary worksheets, and selected sales invoices and contracts for the liability period; selected purchase invoices and general accounts for the liability period; selected fixed asset invoices for the liability period; and selected resale certificates.

18. During the audit, CDTFA reviewed appellant’s bank deposits and found that appellant’s sale of 200 KS-1300Ws to Crestmark was subject to tax because the KS-1300Ws were mobile transportation equipment (MTE). Specifically, CDTFA determined that the KS-1300’s mobile frame was a “trailer,” which, due to its axles and wheels, was highway-capable and could be used to transport property substantial distances and was thus MTE. CDTFA determined that the solar generator system also qualified as MTE because the system was permanently mounted/bolted to the “trailer,” thereby becoming a component part of MTE. CDTFA further found that appellant failed to provide any evidence that Crestmark had elected to report use tax on the fair rental value of the

[7] See https://www.dgs.ca.gov/Resources/SAM/TOC/3600/3622-3.

200 KS-1300Ws, which it leased back to appellant, so appellant's sale to Crestmark was a taxable retail sale. Accordingly, CDTFA disallowed appellant's claimed nontaxable sale of 200 KS-1300Ws to Crestmark for $14,500,000.[8]

19. On April 19, 2022, CDTFA timely issued the NOD to appellant.
20. On May 12, 2022, appellant timely petitioned CDTFA for redetermination.
21. On May 9, 2023, CDTFA issued its decision denying appellant's petition.
22. On June 5, 2023, appellant appealed to OTA.
23. For its appeal, appellant provided exhibits, including the following:
    a. Images of a single-axle variant of the MSU being attached to an SUV.
    b. An image of 10 MSUs on a semi-truck trailer.
    c. An excerpt from U-Haul's website showing that U-Haul sells a Class II trailer hitch (with a 3,500 pound maximum) for a 2024 Toyota Camry, a passenger vehicle.
    d. An excerpt from Toyota's website showing that the 2026 Toyota RAV4, a compact crossover SUV (i.e., a passenger vehicle), has a maximum towing capacity of 3,500 pounds.
    e. An August 20, 2019 *Consumer Reports* article stating that, according to the major pickup truck manufacturers selling compact and full-sized pickups in the U.S., the most common compact pickup truck configurations along with all full-sized pickup trucks could tow at least 5,000 pounds.
24. On December 9, 2025, OTA held an oral hearing on this matter.
25. At the hearing, CDTFA conceded that the following trailers, available for rent from U-Haul, were designed for hauling by passenger vehicles and therefore not MTE:
    a. 4' x 8' Cargo Trailer: a 4'2" x 8'1" (W x L) enclosed cargo trailer weighing 850 pounds empty with a maximum load of 1,650 pounds and a maximum combined weight of 2,500 pounds (trailer plus load). The towing vehicle for this trailer had a maximum recommended speed of 55 m.p.h. and required a 1 7/8" or 2" hitch ball (with a 2,000 pound minimum). U-Haul's website indicated that this trailer was its smallest enclosed cargo trailer rental and was "easy to tow behind any vehicle."

[8] CDTFA's determination also included the following audit items: disallowed claimed exempt sales of $133,149 per examination of taxable sales invoices; unreported excess tax collected; excess bank deposits of $22,608 related to taxable sales; disallowed sales for resale of $263,354 based on fair rental value per leases of MTE; and unreported district taxes. Appellant has provided neither evidence nor argument regarding these items to OTA; thus, OTA will not discuss them further.

b. 4' x 7' Utility Trailer: a 3'2" x 7'6" (W x L) open-top utility trailer weighing 630 pounds empty with a maximum load of 1,770 pounds and a maximum combined weight of 2,400 pounds (trailer plus load). The towing vehicle for this trailer also had a maximum recommended speed of 55 m.p.h. and required a 1 7/8" or 2" hitch ball (with a 2,000 pound minimum). U-Haul's website indicated that this trailer was its smallest open trailer rental and "can be towed with any car," including small cars.

26. At the hearing, appellant's owner testified about the origins of the KS-1300W, stating that a large technology company in Mountain View, California, asked appellant to develop MSUs for use on vacant land at its headquarters complex and required that MSUs have a small footprint. Appellant's owner also testified that it was appellant's standard practice to transport multiple MSUs to a job site on a semi-truck trailer in order to save money and time.

DISCUSSION

California imposes upon all retailers a sales tax measured by the 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.) For the purpose of the proper administration of the Sales and Use Tax Law and to prevent the evasion of the sales tax, it is presumed that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.)

"Sale" means and includes any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except, as relevant here, a lease of MTE for use in transportation of persons or property. (R&TC, § 6006(g).) The tax on a lease of non-MTE tangible personal property is measured by the rentals payable, which generally includes any payments required by the lease. (Cal. Code Regs., tit. 18, § 1660(c)(1).)

As for a lease of MTE, the sale to the lessor is the retail sale and the lessor is the consumer of the equipment. (Cal. Code Regs., tit. 18, § 1661(b)(1).) Accordingly, either the sale of the MTE to the lessor or its use in this state may be subject to tax. (*Ibid.*) If the use of MTE purchased without the payment of tax or tax reimbursement on the purchase price is limited to leasing the MTE, then the purchaser may elect to pay his or her use tax liability measured by the fair rental value of the MTE. (R&TC, § 6094(d); Cal. Code Regs., tit. 18, § 1661(b)(2).) Such election must be made on or before the due date of a return for the period in which the MTE is first leased; otherwise, use tax is imposed on the lessor's entire purchase price for the MTE. (*Ibid*.)

As relevant here, whether the KS-1300W is MTE or not determines the tax consequences that follow (specifically, who is responsible for the tax, not whether the KS-1300W is excluded from taxation). If the KS-1300W is MTE, then appellant's sale of the KS-1300Ws to Crestmark is a retail sale, and Crestmark is the consumer of the KS-1300Ws; either appellant's sale of the KS-1300Ws to Crestmark or Crestmark's use of the KS-1300Ws may be subject to tax. Because there is no evidence that Crestmark elected to report use tax on its lease of the KS-1300Ws to appellant, then appellant would be responsible for the tax on its retail sale of the KS-1300s to Crestmark. However, if the KS-1300W is not MTE, then Crestmark generally would be responsible for tax on its lease of the KS-1300Ws back to appellant—except that Crestmark's lease of the KS-1300Ws to appellant would then be a nontaxable sale for resale because appellant subsequently subleased the KS-1300Ws to Ahern in Nevada (and appellant's sublease itself may be a nontaxable sale in interstate commerce). Thus, appellant's liability for the tax at issue here turns on whether the KS-1300W is MTE.

MTE only includes equipment for use in transporting persons or property for substantial distances, such as railroad cars and locomotives, buses, 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 such equipment. (R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) MTE also includes pickup trucks. (Cal. Code. Regs., tit. 18, § 1661(a)(1).) In other words, MTE includes: (1) equipment for use in transporting persons or property, other than itself, for substantial distances and (2) tangible personal property that does not independently meet the definition of MTE but by nature of its attachment to MTE becomes a component part of the other property meeting that definition of MTE. (*Appeal of Adler Tank Rentals, LLC*, 2022-OTA-411P.)

MTE does not include items of a kind commonly used only in loading or unloading persons or property, or short distance moving within the confines of a limited area, such as a loading dock, warehouse, terminal, bay, or airport. (Cal. Code. Regs., tit. 18, § 1661(a)(1).) As relevant here, MTE specifically excludes passenger vehicles as defined in Vehicle Code section 465, as well as "trailers…designed for hauling by passenger vehicles." (R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) A "passenger vehicle" is any motor vehicle (other than a motortruck, truck tractor, or a bus) used or maintained for the transportation of persons. (Veh. Code, § 465.)

It is the retailer's responsibility to maintain complete and accurate records to support reported amounts and to make them available for examination. (R&TC, §§ 7053, 7054; Cal. Code Regs., tit. 18, § 1698(b)(1).) If CDTFA is not satisfied with the tax returns or the amount of tax required to be paid to the state by any person, CDTFA may compute and determine the amount required to be paid on the basis of any information within its possession or that may come into its possession. (R&TC, § 6481.)

In the case of an appeal, CDTFA has a minimal, initial burden of showing that its determination was reasonable and rational. (*Appeal of Las Playas #10*, 2021-OTA-204P.) If CDTFA's determination is not reasonable and rational, then the determination should be rejected. (*Appeal of Landeros, 2024-OTA-655P*.) If CDTFA's determination is reasonable and rational, then the determination is presumed correct, and the burden of overcoming this presumption is on the taxpayer. (*Ibid*.)

Generally, the appellant bears the burden of proof as to all issues of fact. (Cal. Code Regs., tit. 18, § 30219(a).) The standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) That is, a taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of AMG Care Collective*, 2020-OTA-173P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Las Playas #10, Inc.*, *supra*.) To satisfy its burden of proof, a taxpayer must prove both that the tax assessment is incorrect and what the proper amount of tax should be. (*Appeal of AMG Care Collective*, *supra*.)

Here, CDTFA ultimately determined that the entirety of the KS-1300W model constituted MTE because the solar generator system qualified as MTE when it was permanently mounted/bolted to a "trailer," which independently qualified as MTE (by virtue of its axle system and wheels, which allowed for highway use). Accordingly, CDTFA found that appellant's sale of 200 KS-1300Ws to Crestmark was a taxable retail sale of MTE in California. Further, CDTFA found that appellant failed to provide any evidence that Crestmark had elected to report use tax on the fair rental value of the 200 KS-1300Ws, which it leased back to appellant. Therefore, CDTFA concluded that appellant was liable for tax on the retail sale of 200 KS-1300Ws to Crestmark per Regulation section 1661(b)(1).

On appeal, appellant contends that the KS-1300W is not MTE. Appellant contends that the KS-1300W's mobile frame is a "trailer" designed for hauling by passenger vehicles and this "trailer" is excluded from the definition of MTE along with the attached solar generator system.

Appellant also notes that certain passenger vehicles, like the Chevrolet Suburban, can tow as much as 10,000 pounds, which is far heavier than the KS-1300W at issue; because such a passenger vehicle can tow the KS-1300W, appellant contends that the KS-1300W cannot be MTE. Appellant further argues that, aside from being excluded from the definition of MTE, the KS-1300W's mobile frame with wheels also does not qualify as MTE because it does not qualify as any of the equipment explicitly listed as MTE in R&TC section 6023 (e.g., railroad cars, truck tractors, truck trailers, dollies, bogies, chassis, aircraft, ships, etc.). For these reasons, appellant contends that the KS-1300W is not MTE.

In reply, CDTFA argues that the mere fact that larger passenger vehicles like SUVs can haul a KS-1300W does not mean that the KS-1300W was specifically designed for hauling by passenger vehicles and excluded from the definition of MTE. In this regard, CDTFA notes that, when it comes to engine power and towing capability, an SUV is more akin to a pickup truck, which is explicitly included in the definition of MTE. So CDTFA argues that if a trailer can be towed by a passenger vehicle with engine power comparable to a pickup truck, then the trailer cannot have been designed for hauling by a passenger vehicle, does not qualify for the exclusion from the definition of MTE, and thus must be MTE. And because a pickup truck can haul the KS-1300W's "trailer," CDTFA argues that the "trailer" is MTE, the MSU's solar generator system is also MTE as a component part of the "trailer," and appellant's sale of 200 KS-1300Ws to Crestmark is subject to tax.[9]

As noted earlier, there is a two-prong test for whether tangible personal property is MTE. MTE includes: (1) equipment for use in transporting persons or property other than itself for substantial distances, including specifically listed equipment (first prong) and (2) tangible personal property that does not independently meet the definition of MTE but by nature of its attachment to MTE becomes a component part of the other property meeting the definition of MTE (second prong). (*Appeal of Adler Tank Rentals, LLC*, *supra*.)

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[9] Appellant counters that the issue is not whether a pickup truck, which usually has a towing capacity of at least 5,000 pounds, is able to haul the KS-1300W's trailer (it can); rather, the issue is whether a passenger vehicle can do so. To counter this point, CDTFA provided excerpts from the owner's manuals for a 2025 Toyota Camry and a Honda Accord, which showed that these passenger vehicles could carry maximum loads of 925 pounds and 850 pounds, respectively. CDTFA's implication is that these passenger vehicles cannot tow appellant's KS-1300W. But how much weight these passenger vehicles can *carry* differs from how much weight they can *tow* on a trailer (the Honda Accord's manual had a section entitled "Towing a Trailer," but CDTFA did not provide an excerpt from it); accordingly, OTA finds these specifications regarding maximum loads irrelevant. Regarding towing capacity, at the hearing, CDTFA claimed that its internet research indicated that the Honda Accord had a towing capacity of about 1,000 pounds. However, CDTFA did not provide substantiation for its claim, and OTA cannot make a factual finding on any material disputed fact based solely on arguments made by an unsworn representative during an OTA oral hearing. (Cal. Code Regs., tit. 18, § 30214(f)(5))

Here, the KS-1300W as a whole does not qualify as MTE under the first prong because it does not transport persons or property *other than itself* for substantial distances. Further, it is undisputed that the KS-1300W's solar generator system is not MTE and would only qualify as MTE under the second prong as a component part of the KS-1300W's mobile frame with wheels. Thus, the issue becomes whether the mobile frame with wheels independently qualifies as MTE under the first prong.

As a preliminary matter, the mobile frame with wheels constitutes a trailer. 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. (Veh. Code, § 630.) Here, the parties do not dispute that the mobile frame with wheels is a trailer. Additionally, per the consultant's report for the transaction at issue, the mobile frame includes a strengthened chassis and a dual axle system with wheels configured to carry the entire weight of the solar generator system and the KS-1300W itself. The inclusion of a 2" towing hitch indicates that appellant designed the frame to be drawn by a motor vehicle. As a final note, the consultant's report states that the wheeled mobile frame is "configured to operate like a trailer." If the mobile frame is configured to operate like a trailer, then more likely than not it is a trailer. For these reasons, I would find that the KS-1300W's mobile frame with wheels is a trailer.

However, just because the KS-1300W's mobile frame is a trailer does not mean that it automatically qualifies as MTE. R&TC section 6023 and Regulation section 1661(a)(1) mention "truck trailers" as an example of MTE (i.e., equipment used in transporting persons or property for substantial distances) but exclude trailers "designed for hauling by passenger vehicles" from the definition of MTE. Thus, a trailer is not automatically MTE. At issue here is whether the KS-1300W's trailer was "designed for hauling by passenger vehicles," which would exclude it from the definition of MTE.

One meaning of the term "designed" is "fit, adapted, prepared, suitable, appropriate;" another meaning is "intended, adapted, or designated." (*Farmers Ins. Exchange v. Schepler* (1981) 115 Cal.App.3d 200, 206.) The phrase "designed for" is commonly employed to designate the purpose for which an item of personal property is constructed. (*Ibid*.)

Here, the KS-1300W's trailer has physical dimensions, carries a load amount, and uses hitch equipment similar to the U-Haul trailers that U-Haul claims can be towed by any vehicle and that CDTFA concedes are designed for hauling by passenger vehicles (and thus are not MTE). U-Haul's "4' x 8' Cargo Trailer" is 4'2" wide and 8'1" long, weighs 850 pounds empty, can carry a maximum load of 1,650 pounds for a maximum combined weight of 2,500 pounds (850-pound trailer plus 1,650-pound load), and requires a towing vehicle with a 1 7/8" or 2" hitch ball.

U-Haul's "4' x 7' Utility Trailer" is 3'2" wide and 7'6" long, weighs 630 pounds empty, can carry a maximum load of 1,770 pounds for a maximum combined weight of 2,400 pounds (630-pound trailer plus 1,770-pound load), and also requires a towing vehicle with a 1 7/8" or 2" hitch ball. Based on the U-Haul trailers' specifications, hauling them together with a load totaling the maximum 2,400/2,500 pounds requires Class II hitch equipment (which has a maximum towing weight of 3,500 pounds). Similarly, the KS-1300W's trailer is 4'2" wide and 7'3" long, carries the KS-1300W's total weight of 2,700 pounds, and has a 2" towing hitch. From the evidentiary record, it is unclear how much the KS-1300W's trailer weighs by itself,[10] but, based on the specifications that are known, hauling the 2,700-pound KS-1300W requires Class II hitch equipment as well. Because the U-Haul trailers and the KS-1300W's trailer share similarities in dimensions, load capacity, and class of hitch equipment needed for towing, this suggests that the KS-1300W's trailer, like the U-Haul trailers described above, was suitable, intended, and ultimately designed for hauling by passenger vehicles.

Therefore, I find the KS-1300W's trailer was designed to be towed by passenger vehicles and thus are statutorily excluded from the definition of MTE. As such, no component part of the KS-1300W, including its solar generator equipment, is MTE either. And because the KS-1300W is not MTE, appellant's sale of 200 of these MSUs to Crestmark is a nontaxable sale for resale.

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[10] At the hearing, appellant's owner estimated that more advanced MSUs (i.e., developed after the liability period) weighed 1,300 pounds and approximately half that weight (i.e., 650 pounds) was for the trailer. However, appellant's owner did not indicate whether these trailers included dual axles like the KS-1300W at issue. Half the weight of the 2,700-pound KS-1300W at issue would be 1,350 pounds.

HOLDING

OTA finds that the MSU in question, model KS-1300W, does not qualify as MTE.

DISPOSITION

CDTFA's action denying appellant's petition is reversed to the extent it is based on CDTFA's conclusion that the MSUs at issue are MTE; the tax consequences resulting from this conclusion (including CDTFA's disallowance of appellant's claimed nontaxable sale of 200 KS-1300Ws to Crestmark for $14,500,000) are also reversed; otherwise, CDTFA's action is sustained.

DocuSigned by:

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Andrew Wong
Administrative Law Judge

G. TURNER, Administrative Law Judge, concurring in result:

I agree the tangible personal property at issue here is not Mobile Transportation Equipment (MTE) for use in transportation of persons or property under Revenue & Taxation Code (R&TC) section 6006(g)(4). However, I do not find that conclusion is reached by finding the property is "designed for hauling by passenger vehicles" under R&TC section 6023. I simply find that the property was not for use in transportation of persons or property and therefore is not MTE.

What is a Mobile Solar Unit?

The property at issue here is called a Mobile Solar Unit (MSU), specifically the KS-1300W model. The parties refer to the MSU as having two components: (1) solar equipment and (2) a frame to which one or more axles and wheels are attached that is labeled a "trailer." At the hearing, respondent California Department of Tax and Fee Administration (CDTFA) equated a "trailer" to anything attached to an axle and wheels towed behind a motor vehicle.[1] When asked to explain the Office of Tax Appeal's (OTA) Opinion in *Appeal of Adler Tank Rentals, LLC*, 2022-OTA-411P (*Adler Tank*), which held that the attachment of axles and wheels to a large tank did not transform property into MTE, as it was only carrying itself, CDTFA replied that, while *Adler Tank* found the property at issue was not MTE, this did not mean the property was not a trailer.[2] Except, CDTFA appears to believe that a "trailer" is *explicitly* MTE.[3] Consequently, labeling a component of the property here as a "trailer" places the legal cart before the factual horse.

While I agree that the mobile frame here meets the structural requirements of a "trailer" under California Vehicle Code (VC) § 630,[4] because the tongue weight resting on a ball hitch is not a structural requirement for carriage, I also agree with my colleague that a trailer is not

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[1] Hearing Transcript p. 33.

[2] Hearing Transcript p. 33.

[3] See, e.g., CDTFA Sales and Use Tax Annotations (Annotation) 335.0083, 335.0072, 335.0047. Hearing Transcript p. 34 ("I mean they're MTE because they're trailers…").

[4] R&TC, § 6023 as well as California Code of Regulations, title 18, (Regulation) section 1661, rely on numerous, undefined equipment types when defining MTE. Because each type reflects equipment to be used in transporting people or property upon roads, it makes logical sense that the meaning of the terms, in absence of their specific definitions in the Revenue and Taxation Code, would be construed with respect to specific definitions in the Vehicle Code. (See *People v. Tan* (2015) 61 Cal.4th 1160, 1168, "It is an established rule of statutory construction that similar statutes should be construed in light of the other [citations] and that when statutes are *in pari materia* similar phrases appearing in each should be given like meanings.")

explicitly MTE. Consequently, the label we attach to the mobile frame at issue here does not control our legal determination of whether the property is MTE.

Is the MSU MTE?

Adler Tank, supra, summarizes the test for determining whether certain property is MTE as follows: "(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)." The solar equipment affixed to the trailer here is not MTE. This is not in dispute. The question is whether the trailer itself constitutes MTE (first prong) and if so, does the solar equipment when affixed to it become a component part of MTE (second prong).

In *Adler Tank, supra,* OTA found that "[t]o 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." There is a slight interpretive ambiguity in the construction. Does "capable" mean mechanical ability or design to purpose? Sales and Use Tax Annotations[5] on the subject are conclusory and take both sides[6] and therefore are of no probative value.[7] The Court of Appeal's decision in *Standard Oil Co. of Cal. v. Philbrick* (1941) 47 Cal.App.2d 591 (*Standard Oil Co.*), squarely stands with the latter. There, the plaintiff purchased what the Court called a "trailer chassis consisting of a bare frame and running gear with six wheels equipped with twelve pneumatic tires" and "bolted on this frame a 'draw works' weighing in excess of 20,000 pounds." (*Id*. at p. 592.) A "draw works" is essentially a heavy-duty winch used in oil drilling. Aside from the draw works equipment, "no space was provided for the transportation of

[5] Annotations are brief summaries of legal opinions written by CDTFA's legal department and published as an aide to taxpayers and tax practitioners. 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.)

[6] See, e.g., Annotation 335.0072 (5/13/80) ("Portable air compressors mounted on trailers are [MTE] if they are designed for movement over the highway for substantial distances") versus Annotation 335.0019 (7/5/78) ("[t]he rental of a feed wagon manufactured by the lessor and mounted on a truck chassis purchased for resale was a rental of [MTE] because the wagon is capable of transporting property (feed) substantial distances, if necessary.")

[7] While Annotations can be persuasive authority, the Annotations applicable here are conclusory and present conflicting guidance. Consequently, they lack the type of "thoroughness evident it its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control" the Court deemed necessary before any degree of deference is afforded. (See *Yamaha Corp. of Am. v. State Bd. of Equalization, supra,* at pp. 14-15.)

persons or property." (*Ibid*.) The question the Court faced was whether the equipment was a "trailer" subject to tax under the VC. The Court found that "[s]ince the portable draw works: (1) was not self-propelled, (2) was not designed or used primarily for the transportation of persons or property and (3) was only incidentally operated or moved over a highway" it was not a "trailer" under the VC. (*Id*. at p. 593.) What is more "[t]he fact that if the draw works and cross beams were unbolted and removed the frame and wheels might be fitted with a body and used for other purposes does not alter our view as to the category into which, as at present constituted, the equipment falls." (*Ibid*.)

Adler Tank and *Standard Oil Co.* therefore stand for the same proposition: whether equipment is "for the transportation of persons or property" depends on whether the equipment was designed for such use. As illustrated by *Standard Oil Co*., because the trailer at issue here lacks the addition of a box, bed, or platform on which or in which property is transported, it is structurally incapable of the carriage of property "for use in transportation of persons or property" and therefore is not MTE. (See R&TC, § 6006(g)(4).) As in *Standard Oil Co*., the absence of a cargo-loading surface confirms the unit is a mobile platform for a specific tool (the solar equipment), not a vehicle for the movement of independent property.

Because the trailer at issue here is not itself MTE, the solar equipment affixed to it cannot become a "component part" of MTE. (See R&TC, § 6023.) However, when the solar equipment is affixed to the trailer, the evaluation of the equipment must then consider whether the completed unit was designed for transporting property "other than itself." Like both *Adler Tank* and *Standard Oil Co*., the evidence in the record here fails to show there was any consideration in the design of the completed MSU for transporting property *other than* the solar equipment itself. Consequently, neither the trailer nor the completed MSU qualifies as MTE under R&TC section 6006(g)(4). Having found that neither the trailer nor the completed MSU constitute MTE under R&TC section 6006(g)(4), there is no reason to consider whether the equipment is "designed for hauling by passenger vehicles" under R&TC section 6023.

Nevertheless, in evaluating that question, care should be taken to avoid confusing the conclusion with the premise. Neither party suggests that the solar equipment is MTE. The solar equipment only becomes MTE by being affixed as a component part of the trailer (assuming the traler is MTE). However, by evaluating the finished entire unit's tow-weight as the dispositive factor for whether it falls within the exclusion for "hauling by passenger vehicles" erroneously allows the physical characteristics of non-MTE equipment to define the legal status of the trailer. Measuring the tow-weight of the completed unit conflates the vessel with the cargo. The only question here is whether the trailer is MTE and only if it is can the solar equipment be included as MTE as a component thereof. A fair evaluation of whether the trailer is MTE should then focus exclusively on the design and purpose of the trailer independently, rather than a composite that includes unquestionably non-MTE components. Evaluating the trailer alone without the solar equipment affixed further exposes the arbitrary distinction CDTFA makes between U-Haul trailers (not MTE) and the trailers at issue which they argue are MTE.

While the mobile frame at issue here may be a trailer it is not MTE. Under both *Standard Oil Co.* and *Adler Tank*, a vehicle must be designed to transport property other than itself to be MTE. Since this frame lacks any platform, box, or bed for cargo, its axles and hitch are merely incidental to the mobility of the solar equipment. It is a mobile tool, not "for use in" transportation of property. (R&TC, § 6006(g)(4).)

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

S. RIDENOUR, Administrative Law Judge, dissenting:

I disagree with the Opinion's holding that the mobile solar units at issue (KS-1300Ws) are statutorily excluded from the definition of mobile transportation equipment (MTE) because they were designed to be towed by passenger vehicles. The courts have concluded that statutes granting exemption from taxation must be reasonably, but nevertheless strictly, construed against the taxpayer. (*Standard Oil Co. v. State Bd. of Equalization* (1974) 39 Cal.App.3d 766, 769- 770.) The taxpayer has the burden of establishing entitlement to the exemption or exclusion claimed. (*Ibid.*) Statutorily excluded from the definition of MTE are "trailers…designed for hauling by passenger vehicles." (Revenue and Taxation Code (R&TC), § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) The parties do not appear to dispute that the mobile frame platform/chassis is a trailer. However, I find that King Solarman, Inc. (appellant) has not provided sufficient proof to conclude that its KS-1300Ws were "designed for hauling by passenger vehicles." Consequently, I find that appellant has failed to satisfy its burden of establishing entitlement to the MTE exclusion. The Opinion reasons that since the KS-1300Ws and certain U-Haul trailers share similarities in dimensions, load capacity, and class of hitch equipment needed for towing, the KS-1300Ws were designed for hauling by passenger vehicles. This reasoning is flawed for two reasons.

First, the Opinion rests its holding on the premise that since passenger vehicles can tow small U-Haul trailers (which CDTFA concedes are excluded from MTE) with a Class II hitch, and a KS-1300W can also be towed with a Class II hitch, the KS-1300W must therefore also be capable of being towed by a passenger vehicle and excluded from MTE. However, the most crucial inquiry is *the towing capacity of passenger vehicles*, not the towing capacity of a Class II hitch. Typically, passenger vehicles that are not an SUV have a maximum towing capacity of 1,000 to 1,500 pounds, *even when* equipped with a Class II hitch. KS-1300Ws weigh between 1,700 and 3,000 pounds, which exceeds the maximum towing capacity of a typical passenger vehicle. As for SUVs, they are available in a wide variety of sizes, ranging "from small models not much bigger than subcompact cars to extended-length giants that are based on pickup-truck hardware."[1] I consider a vehicle based on pickup-truck hardware (i.e., frame) to be a truck, and since trucks are MTE, I would consider those SUVs to also be MTE. (See R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) For SUVs not based on truck hardware (i.e., "small" or "crossover" SUVs), the SUVs often require being properly equipped (e.g., optional tow-package

[1] See https://www.consumerreports.org/cars/suvs/buying-guide/. Appellant provides pages 1 through 3 of 13 total pages.

installed) before being able to tow up to 3,500 pounds. As a result, I also find those SUVs not to be passenger vehicles when it comes to towing capacity purposes.

Second, the Opinion's comparison of the weight capacity of small U-Haul trailers excluded from MTE with that of the KS-1300Ws is flawed because it rests on a false equivalence. Specifically, U-Haul rents its trailers *empty*, and that unladen weight (i.e., 630- and 850-pounds) is clearly within the towing capacities of most passenger vehicles; thus, such trailers qualify for the exclusion from MTE. In contrast, the KS-1300Ws are not sold/leased "empty" and weigh between 1,700 and 3,000 pounds, which exceeds the towing capacities of passenger vehicles, as discussed above.

R&TC section 6023 and California Code of Regulations, title 18, (Regulation) section 1661 provide a *non-exclusive* list of types of equipment that qualifies as MTE (e.g., trailers, dollies, bogies, chassis, etc.). For purposes of transporting the solar generator system, the KS-1300W has a mobile frame platform that includes wheels which are supported by a strengthened axle configuration that allows for highway use. In other words, regardless of nomenclature, the "mobile frame platform" can transport property for substantial distances and independently qualifies as MTE. (See R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1); *Appeal of Adler Tank Rentals, LLC*, 2022-OTA-411P (*Adler*).) Additionally, the solar generator, by nature of its attachment to the mobile frame platform (which is MTE), becomes a component part of the mobile frame platform. Accordingly, the KS-1300W is MTE under the second prong of *Adler*. (See *Adler*, *supra*.)

The conclusion that the KS-1300Ws qualify as MTE is also consistent with nearly 50 years of respondent California Department of Tax and Fee Administration's (CDTFA's) interpretation and application of R&TC section 6023 and Regulation section 1661, finding in numerous Business Taxes Law Guide annotations (Annotations)[2] that equipment mounted to a mobile platform that transports the property substantial distances qualified as MTE. For example, mobile CT scan units (Annotation 335.0049 (4/26/84)), cement mixers (Annotation 335.0012 (8/15/90)), air compressors (Annotation 335.0072 (5/13/80)), and water purification units (Annotation 335.0009 (4/5/77, 6/17/77, 2/28/78)). There is no apparent difference between the examples in the Annotations and the KS-1300Ws.

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[2] An Annotation is a summary of a legal ruling by, or opinion of, CDTFA's legal department. 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 consider and afford some weight to an Annotation. (See, e.g., *Appeal of Martinez Steel Corporation*, 2020-OTA-074P.)

For the foregoing reasons, I conclude that the KS-1300Ws qualify as MTE, and I respectfully dissent from the Opinion.

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

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