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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **PETERSON TRUCKS, INC.**	OTA Case No.: 240516244 CDTFA Case IDs: 2-389-755, 3-042-215; 3-056-409

OPINION

Representing the Parties:

For Appellant: Trevor Mauck, Attorney
Kimie Pellizaro, CFO

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

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 6561 and 6901, Peterson Trucks, Inc. (appellant) appeals a decision issued by respondent California Department of Tax and Fee Administration (CDTFA) that denied appellant's timely petition for redetermination of a Notice of Determination (NOD) issued on July 21, 2021.[1] The NOD is for tax of $1,133,533, plus applicable interest, for the period April 1, 2014, through December 31, 2017. Appellant also appeals the decision for CDTFA's denial of appellant's protective claim for refund filed December 4, 2020, and its claim for refund filed on August 16, 2021, in the amount of $1,132,391.66 for the period June 1, 2016, through December 31, 2017.[2]

Office of Tax Appeals (OTA) Panel Members Huy "Mike" Le, Andrew Wong, and Josh Aldrich held a virtual oral hearing for this matter on January 14, 2026. At the conclusion of the oral hearing, OTA held the record open for additional briefing. After briefing concluded, this

[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 events that occurred before July 1, 2017, "CDTFA" shall refer to the board.

[2] The amount of $1,132,391.66 represents the entire tax due as established upon audit. However, in its briefs, appellant only disputes two items: (1) excess collected sales tax reimbursement of $384,961; and (2) disallowed exempt sales in interstate or foreign commerce of $368,811.

matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, (Regulation) section 30209(b).

ISSUES

1. Whether appellant has shown error in CDTFA's determination that $384,961 appellant collected from its lessees on nontaxable subleases constitutes excess tax reimbursement.
2. Whether an adjustment is warranted to the measure of disallowed claimed exempt sales in interstate or foreign commerce of $368,811.

FACTUAL FINDINGS

1. Appellant operates an International Trucks dealership that sells and leases new and used trucks or mobile transportation equipment (MTE) and parts and performs body shop repairs.[3] Appellant is headquartered in San Leandro, California, and operates shops in the California cities of Santa Rosa, San Martin, and Fortuna.
2. On or about July 3, 2018, CDTFA initiated an audit of appellant for the period April 1, 2014, through December 31, 2017 (liability period).
3. On its sales and use tax returns for the liability period, appellant reported total sales of $305,037,905, claimed deductions for sales for resale of $108,671,155, nontaxable labor of $45,504,449, sales to the U.S. Government of $95,006, sales in interstate and foreign commerce of $5,805,871, and partial exemptions for manufacturing research and development of $132,634, resulting in reported taxable sales of $144,247,310 for the liability period. Additionally, appellant reported $1,325,028 in purchases subject to use tax, resulting in total reported taxable transactions of $145,572,338.
4. Appellant maintains a double entry set of books and records supported by source documents. Appellant maintains computerized records. Appellant provided the following documents: (1) sales invoices for various periods; (2) resale certificates from

[3] The term "mobile transportation equipment" includes only 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. (Cal Code Regs., tit. 18, § 1661(a)(1).) The term 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. (*Ibid*.) Examples of such items are hand dollies, forklift trucks, mine cars, pilot boats, tugboats, and lighters, not including, however, lighters or barges specifically designed to be carried regularly aboard vessels for substantial distances. (*Ibid*.) The term does include pickup trucks and tangible personal property which is or becomes a component part of mobile transportation equipment. (*Ibid*.)

BMO Harris Bank (BMO) for the period April 1, 2014, through December 31, 2017; (3) International Registration Plan documents for various periods; and (4) use tax accrual worksheets. CDTFA examined these records and found them to be adequate for sales and use tax reporting purposes.

5. CDTFA reviewed appellant's sales invoices and noted a line item for "LSR RMB TX" on lease invoices beginning in the third quarter of 2016 (3Q16).[4] Appellant explained that it entered into an agreement with BMO for the sale and lease-back of 320 MTE units. The MTE included in the sale were subject to preexisting leases. Based on the sale and lease-back agreement, appellant thereafter became BMO's lessee, and the existing lessees became sublessees.

6. CDTFA found that BMO had issued a timely resale certificate to appellant, and BMO had timely elected to report tax on the fair rental value of the MTE. However, the lease amount BMO charged appellant for the lease of MTE was less than the lease amount appellant charged the end-users of that MTE (sublessees). This reduced the use tax legally imposed on the use of the MTE starting 3Q16. Nevertheless, appellant continued to collect reimbursement from the sublessees at the higher lease rate applicable prior to BMO purchasing the MTE during 3Q16. In other words, while the applicable tax owed to CDTFA on the fair rental value of the MTE at issue was $473,791, appellant collected reimbursement of $858,752 from its sublessees during the liability period. The reimbursement appellant collected exceeded the applicable tax by $384,961 (i.e., $858,752 - $473,791). Appellant remitted the $473,791 to BMO (who in turned remitted it to CDTFA) and appellant retained the $384,961 and did not remit it to CDTFA or to BMO.

7. CDTFA found that appellant charged its sublessees "LSR RMB TX" of $858,752, and that appellant paid BMO $473,791 in tax reimbursement based on the fair rental value of the MTE. For the reasons discussed below, CDTFA considered the difference between LSR RMB TX and the tax imposed on the use of the MTE (and paid by appellant to BMO) to be excess tax reimbursement of $384,961.

8. Based on the abbreviation and the fact that the amount collected corresponded to the historical sales tax rate, CDTFA concluded that LSR RMB TX meant "Lessor Reimbursement Tax." In response, appellant asserted the following: the amounts on the LSR RMB TX line represented an allocation of about 10 percent of the sublessee

[4] No tax liability for this item is asserted for periods prior to 3Q16. The exact date appellant changed the invoice language (and reporting method) is not specified in the audit file.

payments to recoup sales tax, administrative fees, bank fees, and other operational costs; the term "LSR RMB TX" meant "Lessor Reimbursement Transaction"; and the LSR RMB TX line was used due to limitations with its accounting software, which could not otherwise accommodate such an allocation.

9. Nevertheless, because CDTFA found that the payments received by appellant exceeded the applicable tax imposed on the use of the MTE, CDTFA determined that a portion of the LSR RMB TX charge constituted excess tax reimbursement. Specifically, CDTFA allowed $473,791, representing the tax imposed based on fair rental value and remitted to BMO. CDTFA disallowed the $384,961, on the basis that this amount exceeded the use tax imposed on the transactions and, as such, constituted excess tax reimbursement. CDTFA also found that appellant had failed to return the excess tax reimbursement of $384,961 to the sublessees. As such, CDTFA asserts the $384,961 in excess tax collected from appellant's customers and retained by appellant must be remitted to the state.

10. With regard to claimed sales in interstate or foreign commerce, CDTFA employed a block test to examine sales invoices for the periods of July 2014, November 2015, June 2016, and March 2017.[5] CDTFA divided sales invoices into two strata: (1) stratum 1 was sales less than $50,000; and (2) stratum 2 was sales greater than or equal to $50,000. CDTFA found no errors in stratum 1. CDTFA reviewed stratum 2 invoices on an actual basis and disallowed sales that lacked bills of lading or where bills of lading or other documents showed either delivery addresses in California or that the customer was located in California. CDTFA disallowed claimed sales in interstate or foreign commerce of $1,157,892. Appellant agreed with disallowed sales in interstate or foreign commerce of $789,081 but disputed disallowed sales of $368,811, which were composed of the following: (1) a truck bearing the vehicle identification number (VIN) ending in 32050 (MTE 32050) that was sold on September 30, 2017, for $123,917 to Teocal Transport, Inc. (Teocal) and delivered from San Leandro, California, to an address in Reno, Nevada; (2) a truck bearing the VIN ending in 26359 (MTE 26359) that was sold on December 31, 2017, for $122,447 to Diamond Tank Lines (DTL) and delivered to Doudell Trucking Co. at an address in Phoenix, Arizona; and (3) a truck bearing the VIN ending in 26360 (MTE 26360) that was sold to Diamond Tank Lines

[5] A block sample is a generally accepted audit tool that examines transactions from a representative portion of an audit period and applies the findings to the audit period. It is typically used when complete records are not available for the entire audit period.

on December 31, 2017, for $122,447 to DTL and delivered to Doudell Trucking Co. at an address in Phoenix, Arizona.[6]

11. On October 30, 2020, appellant paid $410,517 based on the excess tax reimbursement audit findings.[7] On December 4, 2020, appellant filed a protective claim for refund for $1 or more for the period June 1, 2016, through December 31, 2017.
12. On July 21, 2021, CDTFA timely issued an NOD to appellant for $1,133,533 in tax plus accrued interest for the liability period. The NOD reflected that appellant had paid $1,133,535.66 to CDTFA.
13. On August 13, 2021, appellant filed a petition for redetermination that disputed the NOD in the amount of $1,396,662.67. Specifically, appellant disputed the following items: (1) excess sales tax reimbursement and (2) disallowed sales in interstate and foreign commerce.
14. On August 16, 2021, appellant filed a claim for refund for $1,132,391.66.
15. On April 18, 2024, CDTFA issued a decision denying appellant's petition for redetermination and claims for refund.
16. This timely appeal followed.
17. In response to OTA's additional briefing request, appellant provided a sample Vehicle Lease and Service agreement (Sample Lease) and a copy of the June 27, 2016 Master Vehicle Lease Agreement (Master Agreement) that memorialized the sale and lease-back agreement between appellant and BMO. The Sample Lease is between appellant as lessor and a lessee, and the relationship was subsequently changed to lessee/sublessor and sublessee based on the Master Agreement.
18. The Sample Lease includes an ink-stamped paragraph on three of the pages that reads: "This contract, security agreement, promissory note and/or lease and all its schedules and all rights, rents and movies due hereunder, and any property listed herein or therein, is owned by or has been assigned to [BMO] or its affiliates or subsidiaries [BMO] and is subject to the security interest of [BMO]. Any attempted or actual assignment or transfer of an interest in this contract to any person other than [BMO] violates the rights of [BMO] and is void."

[6] Some documents identify the customer as Doudell Trucking Company Inc. DTL and Doudell Trucking Co. are related entities.

[7] $384,961 is the disputed amount regarding excess tax reimbursement. For this audit item, appellant made an overpayment of $25,556 that should be applied to the audit liability or refunded to appellant.

19. Item 7 of the Sample Lease explains the charges, which include fixed charges, mileage charges, cost of certain repairs and services, and additional charges. Additional charges include: "(1) any increase in license or registration fees, Federal Heavy Vehicle Use Tax, vehicle inspection fees, fuel tax permits and personal property or ad valorem tax; (2) any new or additional tax or governmental fees adopted after the date of execution of the applicable Schedule A; and (3) any increase in insurance fees or premiums instituted after the execution of the applicable Schedule A."

20. During the hearing, appellant's CFO, K. Pellizaro, testified that LSR RMB TX stands for Lessor Reimbursement Transaction, and it was a charge to recoup any overhead cost related to the sublease transaction. However, she also testified that she "not part of the setup of that transaction at the time. At the time, I was [a] financial analyst, and I was not overseeing taxes." And "the tax individuals that were helping with these transactions at the time… don't work at Peterson anymore." In response to whether the original lease authorized the LSR RMB TX, appellant's CFO stated that there was not "specifically that line item. But the lease … allows [appellant] to recoup additional costs related to the maintenance of the leases."

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, the law presumes that all gross receipts are subject to tax until the contrary is established. (R&TC, § 6091.)

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, Inc.*, 2021-OTA-204P.) If CDTFA's determination is not reasonable or 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, 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*.)

Issue 1: Whether appellant has shown error in CDTFA's determination that $384,961 appellant collected from its lessees on nontaxable subleases constitutes excess tax reimbursement.

When sales tax does not apply, use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, measured by the sales price, unless that use is specifically exempted or excluded by statute. (R&TC, §§ 6201, 6401.) The tax is owed by the person (i.e., the taxpayer) using or storing the property in California. (R&TC, § 6202(a).) Exemptions and exclusions are strictly construed against the taxpayer. (*Appeal of Snowflake Factory LLC*, 2020-OTA-270P.) The taxpayer bears the burden of proving entitlement to an exemption or exclusion and must provide some credible evidence of entitlement thereto. (*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), 6010(e)(4), and 6023.) MTE includes "only equipment for use in transporting persons or property for substantial distances," including trucks, truck tractors, and truck trailers. (R&TC, § 6023; Cal. Code Regs., tit. 18, § 1661(a)(1).) 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 such, tax does not apply to an out-of-state lease of tangible personal property, other than MTE. (*Ibid*.; see also *Appeal of Adler Tank Rentals, LLC*, 2022-OTA-411P.)

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 sales tax applies to the sale of the MTE to the lessor, or use tax applies to the lessor's use of the MTE

in this state for leasing purposes. (*Ibid*.) If the use of MTE purchased without the payment of 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).) 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 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. (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).) The election to pay use tax on fair rental value is irrevocable. (*Appeal of Adler Tank Rentals, LLC, supra*; R&TC, § 6094.)

Pursuant to R&TC section 6901.5 and Regulation section 1700(b), when an amount represented by a person to a customer as constituting reimbursement for tax is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid is excess tax reimbursement. The requirements of R&TC section 6901.5 apply whether the underlying transaction is nontaxable, taxable, or exempt. (*Appeal of Body Wise International, LLC*, 2022-OTA-340P; Cal. Code Regs., tit. 18, § 1700(a)(1).) An invoice, sales check, or bill of sale does not need to use the exact phrase "California sales tax reimbursement" in order to trigger the presumption that the lessor collected tax reimbursement. (*Ibid*.; see also *Loeffler v. Target Corp*. (2014) 58 Cal.4th 1081, 1093.) If CDTFA establishes that appellant: (1) sold tangible personal property (2) at retail to the purchaser and (3) charged an amount for tax reimbursement on a document of sale, then this will trigger the presumption that appellant collected excess tax reimbursement. (*Appeal of Body Wise International, LLC*, *supra*; see also Civ. Code, § 1656.1(a)(2); Cal. Code Regs., tit. 18, § 1700(a)(2)(B).)

Appellant contends that it did not collect excess tax reimbursement on the MTE subject to the sale and lease-back agreement (i.e., the Master Agreement). Appellant asserts that LSR RMB TX represents reimbursement of appellant's additional overhead costs (e.g., sales tax, administration fees, bank fees, and other management costs) associated with the sublease of the MTE units. Appellant alleges that its point-of-sale system had limited software options, and because the California sales tax rate was close to the 10 percent estimate of overhead costs appellant used the sales tax table within its software to recoup the overhead costs. Appellant argues that while CDTFA assumed that

LSR RMB TX stood for Lessor Reimbursement Tax, the abbreviation represents Lessor Reimbursement Transaction. Appellant asserts that it employed the line item LSR RMB TX rather than sales tax to show its customers that it was not collecting sales tax reimbursement. Appellant concedes that it does not have, based on its document retention policies, contemporaneous internal documents to show how the abbreviation was established or documents that memorialize the internal discussions involving the creation of the abbreviation. Likewise, appellant concedes that it does not have documents regarding communications to its sublessees explaining the charge.

CDTFA asserts that under R&TC section 6901.5, which emphasizes the way in which tax is displayed to a purchaser, a sublessee examining appellant's invoices would assume that the line item LSR RMB TX refers to tax rather than the reimbursement for overhead costs. CDTFA argues that nothing would inform the purchaser that this line item refers to operational costs. CDTFA also argues that, since this line item directly corresponds to the historic tax rate, a sublessee would also be under the impression that this line item was for tax reimbursement. Therefore, CDTFA asserts that the amounts collected under this line item constitute excess tax reimbursement. There is no dispute as to the calculation of the amount at issue since the amount was calculated using a direct audit methodology (i.e., based on appellant's actual records).

Here, the central dispute involves whether or not the LSR RMB TX charge (to the extent it exceeds the applicable tax imposed on the use of MTE) represents to the sublessees that they were paying tax reimbursement, and thus constitutes excess tax reimbursement. (See R&TC, § 6901.5; Civ. Code, § 1656.1(a)(2); Cal. Code Regs., tit. 18, § 1700(a)(2)(B).) Appellant argues that TX means transaction and CDTFA argues that it means tax. Since both transaction and tax are commonly abbreviated as TX, OTA looks to additional evidence in the record.

Following the Master Agreement, it is undisputed that BMO timely issued resale certificates and elected to collect and remit tax based on the fair rental value of the MTE. It is also undisputed that BMO collected and remitted tax on the fair rental value of the MTE. In addition, it is undisputed that the sublease transactions were not subject to tax. Based on the testimony and the Sample Lease, appellant communicated the change in ownership interest to the then-sublessees by recirculating their preexisting agreements with the addition of a stamp.[8] The stamp clearly indicates that BMO possesses an

[8] See Factual Finding 16, *ante.*

ownership interest. Notifying the lessees, via the stamped language on the recirculated preexisting lease agreements, that they had become sublessees placed the sublessees on notice of the change in ownership interest, but it did not communicate any increase in charges for appellant's overhead costs. After the Master Agreement, there was a change on the invoices to the sublessees; instead of sales tax appearing as an item, LSR RMB TX appeared on the invoices in approximately the same location and calculated at the same rate as the applicable sales tax rate.

According to the testimony of appellant's CFO, LSR RMB TX means lessor reimbursement transaction, and was created to recoup overhead costs that appellant incurred as part of the Master Agreement. However, appellant's CFO was working as a financial analyst at the time that the abbreviation was established and thus she has limited personal knowledge. Appellant's CFO testified that while there was not a specific line item in the lease to recoup overhead costs, the lease agreement permitted the recoupment of additional costs related to the maintenance of the lease. Upon examining the Sample Lease, OTA notes that there are fixed charges that are itemized in Schedule A, mileage charges based on customer's use of the MTE, cost of certain repairs and services based on criteria not relevant here, and additional charges. In the Sample Lease, however, OTA does not find a provision for lease maintenance that would permit appellant to pass on additional overhead costs to its customers, and appellant has not directed OTA's attention to any such provision. Aside from insurance fees and premiums, the additional charges are for changes to various governmental taxes and fees. While appellant's explanation that there were increased operational costs stemming from the Master Agreement and that it intended to pass those costs on to the sublessees is logical, the mechanism for passing these operational costs is not apparent in the Sample Lease. As such, it is more likely than not that the sublessees were under the impression that they were paying lessor reimbursement taxes, and not lessor reimbursement transactions.

Based on the foregoing, OTA finds that the statutory presumption that appellant collected excess tax reimbursement is triggered because LSR RMB TX was calculated in the same amount as the historical sales tax rate, LSR RMB TX appeared as a line item in approximately the same location as sales tax, the Sample Lease only permitted additional charges for changes to various governmental taxes and fees, and, based on the location, amount, and choice of abbreviation, the sublessees more likely than not interpreted TX to be tax. (See Civ. Code, § 1656.1(a)(2); Cal. Code Regs., tit. 18, § 1700(a)(2)(B).) In sum to the extent the amount appellant collected exceeds the applicable tax imposed on the use

of MTE, OTA finds that CDTFA established a rebuttable presumption that LSR RMB TX charges are excess tax reimbursement and appellant has failed to rebut the presumption by a preponderance of the evidence.

Issue 2: Whether an adjustment is warranted to the measure of disallowed claimed exempt sales in interstate or foreign commerce of $368,811.

A sale of tangible personal property that is required to be shipped and is shipped from a point within this state to a point outside this state by the retailer by means of common carrier is generally exempt from sales tax. (R&TC, § 6396; Cal. Code Regs., tit. 18, § 1620(a)(3)(B).) "Bills of lading or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside this state must be retained by the retailer to support deductions taken" for all claimed exempt sales in interstate commerce. (Cal. Code Regs., tit. 18, § 1620(a)(3)(D).)

There is an exemption from sales tax on the gross receipts from any sale that California is prohibited from taxing under the Constitution or law of the United States or under the California Constitution. (R&TC, § 6352.) Under the Commerce Clause, Congress has the power to regulate commerce among the states. (U.S. Const., art. I, § 8, cl. 3.) The issue of whether a state can require a retailer to collect and/or remit such tax involves an interpretation of the Commerce Clause and is commonly referred to as nexus. Here, the nexus is clearly sufficient because appellant is an in-state retailer that is engaging in sales in this state. (*Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274, 279.)

When sales tax does not apply, use tax applies to the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state, measured by the sales price, unless that use is specifically exempted or excluded by statute. (R&TC, §§ 6201, 6401.) As relevant here, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state is required to register with CDTFA and, at the time of making the sale, to collect the use tax from the purchaser, and give the purchaser a receipt therefor, unless the sale is exempt or excluded from tax. (R&TC, § 6203(a); Cal. Code Regs., tit. 18, § 1684(a).) The use tax required to be collected by the retailer constitutes a debt owed by the retailer to the state. (Cal. Code Regs., tit. 18, § 1684(g).)

The law creates a presumption that tangible personal property delivered outside this state to a person known by the retailer to be a California purchaser was purchased for storage, use, or consumption in this state. (R&TC, § 6247; Cal. Code Regs., tit. 18, § 1620(b)(3).)

Objective indications of California residency include the maintenance of a family home in California, California bank accounts or business interests, California voting registration, the possession of a California driver's license, or the ownership of California real property. (*Appeal of Holiday World* (SBE Memo.) 2001 WL 1034735.)[9] The retailer may rebut this presumption by taking a statement signed by the purchaser at the time of the sale that the property was purchased for use at a designated point outside this state. (R&TC, § 6247; Cal. Code Regs., tit. 18, § 1620(b)(3)-(5).) Other satisfactory documentary evidence may also be presented to controvert the presumption. (*Ibid*.)

When a vehicle is first functionally used outside of California and is brought into California within 12 months from the date of its purchase, it is rebuttably presumed that the vehicle was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur: (1) the vehicle was purchased by a California resident as defined in section 516 of the Vehicle Code; (2) the vehicle was subject to registration under Chapter 1 of Division 3 of the Vehicle Code during the first 12 months of ownership; (3) the vehicle was subject to property tax in this state during the first 12 months of ownership; or (4) the vehicle was used or stored in this state more than one-half of the time during the first 12 months of ownership. (Cal. Code Regs., tit. 18, § 1620(b)(5)(A).) A presumption that the vehicle was purchased for use in California may be rebutted by documentary evidence that the vehicle was purchased for use outside the state during the first 12 months of ownership. (R&TC, § 6248(b); Cal. Code Regs., tit. 18, § 1620(b)(5)(B).)

Appellant asserts that the MTE 32050 was delivered to a buyer in Nevada and that appellant believed in good faith that these trucks were being purchased for use outside of California and therefore not subject to California tax. For MTE 32050, appellant provided the following documents: (1) an invoice dated July 14, 2017; (2) a California Department of Motor Vehicles (CA DMV) Bill of Sale dated July 31, 2017; (3) a delivery receipt dated July 29, 2017; (4) a CDTFA-448 (*Statement of Delivery Outside of California*) form dated July 29, 2017; and (4) an Apportioned Cab Registration Card issued by the CA DMV on July 31, 2017.

Appellant asserts that the MTE 26359 never entered California but was delivered directly from a Navistar facility in Arizona to DTL in Phoenix. For MTE 26359, appellant provided the following documents: (1) an invoice dated October 16, 2017; (2) a delivery

[9] A Memorandum Opinion is a precedential opinion adopted by OTA's predecessor, the board, that contains the findings of fact and conclusions of law that form the basis of the board's decision on an appeal. (R&TC, § 40(d); Cal. Code Regs. tit. 18, § 5511(r), (w).)

receipt dated October 18, 2017; (3) a bill of lading dated October 18, 2017; (4) an undated California Application for Registration of New Vehicle filed by DTL with the CA DMV; (5) an Apportioned Cab Registration Card issued by the CA DMV on October 23, 2017; and (6) a DTL Mileage & Fuel Tax by Unit Report for the period October 2017, through March 2018.

Appellant also provided the following documents for MTE 26360: (1) an invoice dated October 13, 2017; (2) a delivery receipt dated October 11, 2017; (3) an undated California Application for Registration of New Vehicle filed by DTL with the CA DMV; (4) a Bill of Lading dated October 5, 2017; and (5) an Apportioned Cab Registration Card issued by the CA DMV on October 23, 2017.

While CDTFA does not dispute that the three trucks were delivered to locations outside of California, CDTFA argues that both DTL and Teocal are California residents under Vehicle Code section 516. CDTFA provided copies of California Secretary of State Statements of Information – Corporation, which indicate that: (1) DTL had an address in San Jose, California; and (2) Teocal had an address in Hayward, California. CDTFA asserts that because both customers were California residents, the deliveries are subject to the presumption of R&TC section 6247, which requires appellant to demonstrate that the MTE units were not purchased for storage, use, or other consumption in California. CDTFA asserts that appellant failed to obtain a statement in writing, signed by the purchaser, that the property was purchased for use at a designated point or points outside of California and has therefore failed to rebut the presumption of R&TC section 6247.[10]

Appellant asserts that it did not know that DTL and Teocal were California residents, and that it relied in good faith on the CDTFA-448 form. Appellant asserts that without knowledge that the purchasers were California residents, there is no presumption that appellant needs to overcome and the trucks are exempt as items sold in interstate commerce under R&TC section 6396. Appellant asserts that if the purchaser caused the trucks to be subject to California use tax after the purchase, it is the purchaser rather than appellant that is liable for the tax.

For MTE 32050, the evidence in the record shows that Teocal maintained an address in San Leandro, California. The bill of sale clearly shows Teocal's California address. Appellant's invoice for MTE 32050 also clearly indicates Teocal's California address. Accordingly, OTA finds that appellant more likely than not knew, at the time of the

[10] A CDTFA-447 (*Statement Pursuant to Section 6247 of the California Sales and Use Tax Law*) form is available for taxpayers to obtain such a statement in writing.

sale, that Teocal was a California resident, and the presumption pursuant to R&TC section 6247 attaches.

For MTE 26359 and MTE 26360, sold to DTL, both were registered in San Jose, California, based on the DMV Application for Registration of New Vehicle. Both DMV Applications for Registration of New Vehicles, for MTE 26359 and 26360, include a signature, signed on behalf of appellant with the San Jose address. The invoice for MTE 26359 includes the San Jose address for DTL. Likewise, the invoice for MTE 26360 shows the San Jose address for DTL. Also, the Apportioned Cab Registration Card also contains the San Jose address. As such, OTA finds that appellant more likely than not knew, at the time of the sale, that DTL was a California resident, and the presumption pursuant to R&TC section 6247 applies.

Therefore, in the absence of a statement in writing, appellant must show that MTE 32050, MTE 26359, and MTE 26360 were not in fact used or stored in California for more than one-half of the time during the first 12 months of operation pursuant to Regulation section 1620(b)(5)(B) to rebut the presumption. The available evidence does not establish that the vehicles were used outside California for more than one-half the time. For example, the mileage logs for MTE 26360 show mileage in California, during the first 12 months of service, exceeding mileage outside of California. Based on the foregoing, OTA finds that the presumption pursuant to R&TC section 6247 is applicable to all three MTE transactions, and appellant has failed to rebut the presumption by a preponderance of the evidence.

HOLDINGS

1. Appellant has not shown error in CDTFA's determination that $384,961 appellant collected from its lessees on nontaxable subleases constitutes excess tax reimbursement.
2. An adjustment is not warranted to the measure of disallowed claimed exempt sales in interstate or foreign commerce of $368,811.

DISPOSITION

CDTFA's action denying appellant's petition for redetermination is sustained.

DocuSigned by:
Josh Aldrich
43745BB80691484...
Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
6A4294617A67403...
Andrew Wong
Administrative Law Judge

Date Issued: 8/18/2026