

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**395.1893**

In the Matter of the Petition For )	DECISION AND RECOMMENDATION
Redetermination of State and Local )	OF HEARING OFFICER
Sales Taxes and Transactions Tax; )	
)	
R. A. W--- CO., )	Account No. SR -- XX XXXXXX
)	
<u>                    Petitioner</u> )	

The above-entitled matter came on regularly for hearing on Monday, September 17, 1973 at 1:30 p.m., in Van Nuys, California.

Appearances

For Petitioner:	Mr. J--- P---, Office Man. R. A. W--- Co.
For Bd. Of Equalization:	Mr. Clyde Hodder, Aud. Super- visor, Van Nuys District
	Mr. Joe Grenat, Auditor Van Nuys District

Protest

Pursuant to an audit covering the period from October 1, 1969 through December 31, 1972, and a determination issued on April 10, 1973, Petitioner protests the assertion of tax on the following:

<u>Item</u>	<u>Measure</u>
Sale of capital assets:	\$121,500
Tax measured by rental receipts	2,602

Contentions

1. The transactions deemed to have been taxable sales of assets were contributions to a joint venture and were contributions to capital.
2. Rentals were of equipment purchased tax paid.

Summary

Petitioner is a corporation engaged in the construction business as an engineering contractor.

Petitioner and W--- B--- Company of ---, Minnesota, formed a joint venture to bid for the contract to construct the "Distribution System, --- Feeder, Specification No. 828, Pipeline from --- Street to --- Tunnel".

The bidding and joint venture agreement was dated April 9, 1969, and the joint venturers were successful in their bid. Contracts were entered into with --- --- Water District of --- ---. Auditor's notes in the petition file indicate that presently there is a suit pending against --- --- Water District of --- --- to recover \$2,630,000.

The controversy over the alleged sale of assets arises as a result of the joint venture entity. Petitioner and W--- B--- Company were the sole joint venturers, each having a one-half interest in the undertaking and each contributing one half of the assets to the joint venture.

At the outset each party contributed cash in equal amounts; later Petitioner contributed equipment and W--- B--- contributed cash in amounts equal to the value of the equipment. Thus, the parties retained their 50-50 or equal interest in the joint venture.

The auditor included the value of the equipment contributed by Petitioner to the joint venture in the measure of the tax assessed as receipts from the sale of equipment. Schedule 10A page 1 of the work papers indicate that Petitioner "received credit in W--- - W--- (joint venture) for value of sales price" as follows:

<u>Date</u>	<u>Item</u>	<u>Value</u>
Feb. 1970	N.W. Crawlat Crane J/V 2-12	\$ 37,500
Apr. 1970	Cat Traxcavator 955 J/V 4-12	12,500
May 1970	Lima Truck Crane J/V 5-12	<u>50,000</u>
	subtotal:	\$ 99,500
Jul. 1971	Michigan Loader #200 J/V 7-11	7,000
	subtotal:	\$106,500
June 1970	Cat Traxcavator 977 J/V 6-12	<u>15,000</u>
	Total:	\$121,500 <sup>1/</sup>

<sup>1/</sup> This equipment is shown on W--- - W--- --- Feeder books as having been purchased from W--- - W--- B--- project. B--- Project books were not available (to auditor). Treated as a sale on taxpayer's books.

The equipment that was rented by petitioner included a change room trailer which was deemed to have been rented in a substantial different form than acquired by reason of the installation of a shower, air conditioner and a heater and an Arrow Hydraulic Hammer purchased ex tax pursuant to an occasional sale. The hydraulic hammer produced revenue in the amount of \$1,400 and the balance, \$1,202 was from the trailer rental.

The auditor considered the transfer of assets for credit in the joint venture to be a taxable sale pursuant to a paragraph (1004.40) in the Field Audit Manual which provides:

All transfers of tangible personal property to an existing or going partnership or joint venture are subject to tax unless the transaction meets the condition of an occasional sale as defined in Section 6006.5 of the law.

#### Conclusions

The transfers of equipment to the joint venture for credit in the joint venture did not constitute sales of equipment to the joint venture since there was no considerations paid the transferor, Petitioner.

There is no sales tax liability upon the transfer of property to a joint venture or partnership by way of contribution to the capital of the venture or partnership. The tax does apply, however, to a sale of property to the partnership by a partner for cash or other consideration not representing an interest in the business, unless the transferor is not himself a "seller". Tax Counsel Opinion 395.1960 Cal. Tax. Service 5-25-51.

Thus, where petitioner contributed an asset to the joint venture capital account and received nothing in return from the joint venture in the way of cash or other consideration there would not be a sale of the asset. In this instance the other joint venturer contributed assets equal in value to those contributed by Petitioner in order that their respective interests remained the same; to wit, 50-50. The fact that all of the assets were not contributed simultaneously is not controlling and does not result in a sale. The application of tax turns on whether the joint venture paid anything in the form of consideration (cash or other property valued in money or moneys worth) to the transferor.

The transfer of the "Cat Traxcavator 977" in June 1970 appears to have been the result of a "sale" by another joint venture (W--- - W--- B--- Project) and not by Petitioner. If, in fact, it was a sale and it was a taxable sale, Petitioner would only be liable on the basis of having been a party to the W--- - W--- B--- Project Joint Venture; and Petitioner and W--- B--- would be jointly and severally liable for sales tax if any sales tax would be due. The prime liability, if any, is that of the W--- - W--- B--- Project Joint Venture and petitioner in the form of a dual determination which now may be barred by the statute of limitations.

Installation of a shower, air conditioner and heater in a trailer rented and used as a "change room" hardly can be said to substantially change the form of the trailer. Since tax was assessed on the basis of a "change in form" it should be deleted.

Tax on the rental use of the hydraulic hammer was properly included since the hammer was acquired ex tax pursuant to an occasional sale.

Recommendation

Redetermine. Reaudit and delete the item identified as a sale of capital assets and \$1,202 of the measure of tax on rentals.

Adjustment to be made by Petitions.

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Robert H. Anderson, Hearing Officer

\_\_\_\_\_  
Date