

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

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4 In the Matter of the Petition for Redetermination)
and Claim for Refund Under the Sales and Use)
5 Tax Law of:) Account Number SR Z OHA 97-183225
) Case ID 556419, 557544
6 SMF ENERGY CORPORATION) Oral hearing date: November 19, 2013
)
7 Petitioner/Claimant)
_____)

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9 Representing the Parties:

10 For Petitioner: No Appearance
11 For Sales and Use Tax Department: Andrew Kwee, Tax Counsel
12 For Appeals Division: Jeffrey G. Angeja, Tax Counsel IV

13 LEGAL ISSUE

14 Whether a portion of the selling price charged for fuel represents a fee charged by petitioner for
15 nontaxable transportation services.

16 FINDINGS OF FACT AND RELATED CONTENTIONS

17 Petitioner operated a mobile and bulk fueling service throughout the United States. It did not
18 maintain any underground storage tanks; instead it purchased fuel on a daily basis and delivered the
19 fuel to its customers. During its audit of the period April 1, 2005, through March 31, 2008, the Sales
20 and Use Tax Department (Department) found that petitioner’s reported gross receipts were less than
21 the amount shown for sales of fuel in its records. Upon further review, the Department found
22 petitioner regarded a portion of the amount shown on the invoice as the sale price of fuel as a
23 nontaxable service charge.¹ The Department concluded that the difference between the selling price
24 shown on the invoice and the amount reported to the Board represented transportation charges, which
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27 ¹ For example, with respect to the only invoice copied in the audit workpapers, which is representative of the transactions at
28 issue, the amount charged for a sale of diesel was \$1,696.04. However, for that sale, the amount reported as taxable on the
sales and use tax return was \$1,595. Thus, for this transaction, the \$101 difference is the amount in dispute. Such invoices
are the only known contemporaneous contract of sale documents relevant to the transactions at issue.

1 were subject to tax because they were not separately stated on the sales invoice. Petitioner disputes
2 that conclusion, arguing that the difference represents a fee for outsourced logistical services, such as
3 data collection, reporting, and truck-to-truck redistribution of fuel, which petitioner regards as
4 nontaxable services. In addition, petitioner has filed a claim for refund of the tax that it reported on
5 returns with respect to the alleged logistical services fee for the period December 15, 2006, through
6 October 31, 2010. The claim for refund, which is timely for the period October 1, 2007, through
7 October 31, 2010, is based on the same grounds as the above-described petition.

8 APPLICABLE LAW

9 A sale or purchase includes any transfer of title or possession, in any manner or by any means
10 whatsoever, of tangible personal property for consideration. (Rev. & Tax. Code, §§ 6006, subd. (a),
11 6010, subd. (a).) Taxable gross receipts or sales price includes all amounts received with respect to the
12 sale, with no deduction for the cost of the materials used, labor or service cost, or other expenses of the
13 retailer passed on to the purchaser unless there is a specific statutory exemption or exclusion. (Rev. &
14 Tax. Code, §§ 6011, subd. (a), 6012, subd. (a).) Such terms include any services that are a part of the
15 sale. (Rev. & Tax. Code, § 6012, subd. (b)(1).)

16 Taxable gross receipts also include the cost of transportation of the property, except as
17 excluded by specific statutory provisions. (Rev. & Tax. Code, § 6012, subd. (a)(3).) In particular,
18 separately stated charges for transportation from the retailer's place of business or other point from
19 which shipment is made directly to the purchaser are not included in gross receipts. (Rev. & Tax.
20 Code, § 6012, subd. (c)(7).) Transportation charges are regarded as separately stated only when those
21 charges are separately set forth in the contract for sale issued contemporaneously with the sale, such as
22 the retailer's invoice. (Cal. Code Regs., tit. 18, § 1628, subd. (a).)

23 ANALYSIS & DISPOSITION

24 Initially, we note that petitioner's sales tax worksheets and reports provided to the Department
25 at the time of the audit showed that petitioner added a markup for transportation charges and that the
26 amount of the markup matched the understatement found in the audit. In addition, petitioner's
27 contention that these charges are a "monthly fee" (consisting of the sale of tangible personal property
28 and nontaxable services) and not transportation charges lacks support. Petitioner has not provided any

1 evidence to support its assertion that the charges are a monthly fee consisting in part of service
2 charges. Accordingly, we find that the charges at issue are transportation charges.

3 Under Revenue and Taxation Code section 6012, subdivision (a)(3), transportation charges are
4 to be included in gross receipts unless otherwise excluded. California Code of Regulations, title 18,
5 section 1628, subdivision (a), states that separately stated transportation charges are not included in
6 gross receipts. Here, the transportation charges were not separately stated on the sales invoices, and
7 petitioner has not argued that they were, and so those charges are not excluded from gross receipts.
8 (Rev. & Tax. Code, § 6012, subd. (c)(7).) Accordingly, we conclude that petitioner owes tax on the
9 amount of transportation charges that were not reported as part of gross receipts, and that there is no
10 overpayment subject to refund for later periods.

11 ORDER

12 On November 19, 2013, the Board ordered that the petition and claim for refund be denied, and
13 that the matter be redetermined in accordance with the September 6, 2001, reaudit report.

14 Adopted at Sacramento, California, on April 22, 2014.

15 Jerome E. Horton, Chairman

16 Michelle Steel, Member

17 Betty T. Yee, Member

18 George Runner, Member

19 Marcy Jo Mandel, Member*

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25 *For John Chiang, pursuant to Government Code section 7.9.
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