



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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February 10, 2004

Re: Situs of Movable Property Pursuant to Rule 205

Dear Mr. :

This letter is in response to your May 29, 2003, letter to Assistant Chief Counsel Kristine Cazadd regarding the proper situs of mobile amusement rides. As discussed in more detail below, the conclusion in the situation presented requires significant factual development, which is the responsibility of the Merced County Assessor. If sufficient evidence from the taxpayer is provided and it is determined that some of the movable equipment has tax situs in Merced County, and in other states, then apportionment of the property taxes will be required. Proper evidence for the assessor to consider includes, but is not limited to, records and documentation that demonstrate the physical location of the property on the lien date, the movement of the property to and from the light maintenance facility in Merced County, and the time that the property is used or present within Merced County, other counties in California, and outside California.

Factual Background

Based upon the information you provided in your letter the facts, as we understand them are as follows:

1. B is an interstate mobile amusements ride operator with a primary emphasis on the operation of rides for fairs in six states. Approximately 45 percent of B's revenues are from fair locations outside California.
2. B operates as many as five units simultaneously for an average of five days per location. B participates in fairs located in approximately 30 California counties and 15 counties outside of the State.
3. B began operations in California in 1984. In 1986 it purchased land and a building in Merced County for use as an equipment maintenance and storage facility. In 1989, B relocated its headquarters to the Merced facility.

4. In 1993, B relocated its headquarters to Oregon. The Merced land and building was relegated to a light maintenance facility with some equipment storage and is no longer used to house equipment periodically between uses. The light maintenance facility continues to be operated in Merced County and no information was provided that indicates another similar facility exists in another county or state.
5. Equipment is no longer located permanently or on a temporary basis for more than six months in any one county. As of each lien date, little equipment is in Merced County; the remainder of the equipment is in other California counties or out-of-state.
6. The Merced County Assessor currently asserts property tax assessment jurisdiction based on audit and field inspection records compiled by his staff indicating that all movable in-state and out-of-state equipment has tax situs in the Merced County.

The research we performed with respect to your opinion request included contacting the Merced County Assessor's office. Among the facts reported to us by the assessor's office are the following:

1. In the course of a recent audit over \$19 million of property was escaped because new property was acquired and used in California but not reported in the property statements during the audit period (1999-2002).
2. The property that was disposed was removed from the property tax statements and replaced by new property and the new replacement property was not reported, even though field inspections, DMV records, and sales tax receipts indicated that it is used in California.
3. Repeated efforts were made by the assessor's office to obtain information that would establish that some equipment no longer has tax situs in Merced County and that tax situs had been established in other jurisdictions, specifically Oregon. Such efforts (including a field inspection of B's facilities in Oregon) did not disclose that any of the equipment was habitually located in Oregon.

Independently, we reviewed the website maintained by B. The materials on the website indicate numerous commercial connections to California including the location of marketing, booking, media relations, and ticket handling. Furthermore, based on our review, it appears that many of the principals of this family oriented business permanently reside in California. On the other hand, the website revealed no commercial connection to Oregon, other than activities at fairs.

Law and Analysis

The California Constitution provides that “all property” is subject to property taxation at its “full value” unless otherwise provided by the state constitution or the laws of the United States. (Cal. Const., art. XIII, § 1.) Section 14 of article XIII of the California Constitution provides that: “All property taxed by local government shall be assessed in the county, city, and district in which it is situated.” The word “situated” as used in section 14 does not refer to “mere physical presence on the lien date, but to the situs of property within the state necessary to give jurisdiction to tax.” (*Sea-Land Service, Inc. v. County of Alameda* (1974) 12 Cal.3d 772, 778 “*Sea-Land*”). Likewise, Revenue and Taxation Code section 404 provides that taxable property shall be assessed where the property is situated. Thus, under California law, movable property is assessable by the county in which the property has established a tax situs.

The question of whether or not movable property has situs and, therefore, whether a state has jurisdiction to impose a property tax on tangible personal property is one of due process. (*Braniff Airways v. Nebraska Board* (1954) 347 U.S. 590, 598-599.) In defining the limitation on the state power to impose such a property tax, the “only question is whether the tax in practical operation has relation to opportunities, benefits, or protection conferred or afforded by the taxing State.” (*Ott v. Mississippi Barge Line* (1949) 336 U.S. 169, 174.)

The court in *Ice Capades, Inc. v. County of Los Angeles* (1976) 56 Cal.App.3d 745 (“*Ice Capades*”) summarized the due process issue as follows:

[The] Due Process Clause [does not] confine the domiciliary State’s taxing power to such proportion of the value of the property being taxed as is equal to the fraction of the tax year which the property spends within the State’s borders. [citations omitted.] **[The] State of domicile retains jurisdiction to tax tangible personal property which has ‘not acquired an actual situs elsewhere.’** [citations omitted.] If such property has had insufficient contact with States other than the owner’s domicile to render any one of these jurisdictions a ‘tax situs,’ it is surely appropriate to presume that the domicile is the only State affording the ‘opportunities, benefits, or protection’ which due process demands as a prerequisite for taxation. [citations omitted.] **[The] burden is on the taxpayer who contends that some portion of its total assets [sic] beyond the reach of the taxing power of its domicile to prove that the same property may be similarly taxed in another jurisdiction.** [citations omitted.] If the taxpayer establishes that its movable personal property has acquired a tax situs in a state or states other than the domicile of the taxpayer, a property tax imposed by the state of domicile satisfies the due process clause and is not an unconstitutional burden on interstate commerce only if the tax imposed by the state of domicile is apportioned to allocate to the domiciliary state only such property values as are not subject to the potential of taxation elsewhere. [Emphasis added.]

In the case of property that may acquire more than one tax situs during a given year, the property tax must be apportioned on the basis of the time spent at each tax situs location.

(*Seegmiller v. County of Nevada* (1997) 53 Cal.App.4th 1397, 1401.) For example, in *Ice Capades*, the County of Los Angeles was precluded from imposing an unallocated property tax upon tangible personal property that had acquired a tax situs in New Jersey as well as California.

Where personal property is moved from the domicile of its owner to another location with the intent that it remain there for a short period and then be moved elsewhere or returned to the place of the owner's domicile, the owner's domicile and not the place where the property is temporarily situated is its tax situs. (*Scandinavian Airlines System, Inc. v. County of Los Angeles* (1961) 56 Cal.2d 11.) Conversely, where the property is moved from the state of the owner's domicile to another state with the intention that it remain there for an indefinite period or for a relatively long time, then the place where the property is physically located is its tax situs. (*Minnesota v. Blasius* (1933) 290 U.S. 1.)

The nature of the property owner's contact with the jurisdiction other than its domicile is similarly significant in the determination of whether his property temporarily present in the jurisdiction acquires a tax situs there. If the nondomiciliary owner habitually employs movable property in the jurisdiction for all or a greater part of the tax year, the property acquires a tax situs although any one item of the property mix may be present for only a short predetermined period. (*Pullman's Car Co. v. Pennsylvania* (1890) 141 U.S. 18).

As previously mentioned, the word "situated" connotes a location or situs for tax purposes, and is further defined in Property Tax Rule 205, subdivision (a), for Movable Property, in pertinent part, as follows:

Movable property has situs where located on the lien date if it has been in the county for more than 6 of the 12 months immediately preceding the lien date and if it is to remain in or be returned to the county for any substantial period during the 12 months immediately succeeding the lien date. Property which has been in the county for less than 6 of the 12 months immediately preceding the lien date, but which is committed to use in the county for an indeterminate period or for more than six months, has situs there whether the use extends through or commences with the lien date.

Property which does not have situs where located on the lien date pursuant to the previous paragraph has situs at the location where it is normally returned between uses or, if there is no such location, at the principal place of business of the owner.

Based on Rule 205, movable property that does not have permanent situs in the county where it is located on the lien date has situs in the county where it is returned between uses. And if there is no such location, the situs is the county in which the principal place of business of the owner is located.

Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures*, ("AH 504") discusses tax situs in detail at pages 30 through 48¹. Example 3.1 in AH provides an

¹ AH 504 is available at <http://www.boe.ca.gov/proptaxes/pdf/ah504.pdf>.

example of an out-of-state construction company that worked on a two-year gas pipeline project in California. The property is moved from county to county and does not spend more than 6 months in any county. The example concludes that the property has established a tax situs in California, but under Rule 205 did not establish a tax situs in a specific county. Therefore, the property is taxable in the county in which it was situated on the lien date.

A staff opinion letter also presented facts in which movable equipment that had tax situs in another state was moved to California with the intent of remaining in the state for two years. The equipment was present in Modoc County on the lien date but would be present in various counties of the state during the duration of the project. The third paragraph of Rule 205, subdivision (a), provides that situs is determined either at the location where the equipment is normally returned between uses or at the principal place of business of the owner. The opinion determined that because the equipment was going to be in California for two consecutive years, the latter did not apply and that the former is doubtful because there is no place of normal return. The letter recommended that under Article XIII, section 14, the Modoc County Assessor is required to make the assessment because the property was present in that county on the lien date. (See Annot. 740.0065².)

The tax situs of movable property is determined by a variety of factors, including: (1) where it is documented or licensed; (2) where it is habitually used and stored; (3) the manner of its use; and, (4) the domicile of the owner. Movable property may, by being indefinitely and exclusively employed within another state, acquire an actual situs there and become subject to taxation by that jurisdiction, even though the movable property is documented or licensed in California or its owner is domiciled in California. Likewise, if the owner has permanently moved the property from its original designated situs to another location where it has become habitually used or stored and the owner has informed the assessor of this action, the movable property will acquire actual situs at this new location. It is an owner's burden to provide documentation to an assessor's office sufficient to prove that situs has been established elsewhere.

The domicile of the taxpayer is a significant factor in the determination of situs of taxable property. It is clear that the taxpayer had its principal place of business in Merced County from 1989 through 1993. Based on information obtained from you and viewed on B's website, B continues to conduct a significant amount of business within California. The burden to prove that B's domicile has changed also is on B as the taxpayer.

With regard to the property in question, the Merced County Assessor's Office determined that the situs of this movable equipment has been Merced County since 1986 and has not changed that determination despite the purported change in B's domicile and the use of the facility in Merced County. B no longer returns the majority of the equipment to the Merced location, but continues to operate a light maintenance facility in Merced County

As mentioned above, it is B's responsibility as the property owner to provide documentation to an assessor's office establishing that the equipment being assessed acquired

² Available at http://www.boe.ca.gov/proptaxes/pdf/740_0065.pdf.

situs in Oregon or another state. It is within the discretion of the assessor's staff to determine situs based upon the evidence submitted. Upon receipt of evidence proving the facts presented to us as well, as additional relevant facts, and the proper filing of property tax statements in the counties where the property is located on the lien date, the Merced County Assessor's office should apportion the property tax based on the amount of time spent in that county.

Proper evidence for the assessor to consider, includes but is not limited to, records and documentation that demonstrate the physical location of the property on the lien date, the movement of the property to and from the light maintenance facility in Merced County, and the time that the property is used or present within Merced County, other counties in California, and outside California. Records and documentation that establish the physical location and movement of property would likely include contracts with fair operators, repair and maintenance invoices, storage receipts, shipping documents, contracts for the acquisition of new equipment indicating the place of delivery, and similar evidence. Other information that may be considered in this determination, which is not conclusive on its own, may include the location of the taxing jurisdiction that imposes sales or use tax when the equipment is acquired, the location where the equipment is licensed, state income or franchise tax returns that indicate the source of revenue, location of property, and/or location of payroll, and similar information. Additionally, if B paid property tax to another jurisdiction, the payment would be an important factor in determining apportionment.

The views expressed in this letter are advisory in nature only; they represent the analysis of the legal staff of the Board of Equalization based on present law and the facts set forth herein.

Sincerely,

/s/ Paul A. Steinberg

Paul A. Steinberg
Senior Tax Counsel

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cc: Honorable David A. Cardella, Merced County Assessor
Ms. Kristine Cazadd, MIC:82
Mr. David Gau, MIC:63
Mr. Dean Kinnee, MIC:64
Mr. Todd Gilman, MIC:70