

BF&R Docket No. 2213007
Petition Filed: 12/29/2022
License No. [REDACTED]
IN RE: TRUSTFLOW DIGITAL SERVICES INC
PETITION FOR Review of Refund for Sales/Use Tax
PERIOD(S) 6/28/2019 TO 6/28/2022

AND NOW, May 4, 2023, pursuant to the Fiscal Code, the Act of 1929, April 9, P.L. 343, as amended, (72 P.S. § 1 et seq), the Board of Finance and Revenue of the Commonwealth of Pennsylvania, based upon the reasons set forth herein, hereby ORDERS the following:

Jurisdiction

This petition comes before the Board of Finance and Revenue pursuant to Section 2704 of the Tax Reform Code of 1971, *as amended*, 72 P.S. § 9704.

Issues

Whether Petitioner has provided sufficient evidence to prove that it is entitled to a refund of tax paid on computer services.

Whether Petitioner has provided sufficient evidence to prove that it is entitled to a refund of tax paid on construction activities.

Whether Petitioner has provided sufficient evidence to prove that it is entitled to a refund of tax paid on nontaxable services/purchases.

Whether Petitioner has provided sufficient evidence to prove that it is entitled to a refund of tax paid on out of state transactions.

Statement of the Case

Petitioner, Trustflow Digital Services, Inc., is an IT business that provides workflow, automation, and information processing services. Its headquarters are located in Moosic, Pennsylvania.

On June 28, 2022, Petitioner filed a Petition for Refund with the Board of Appeals (“BOA”), arguing that it paid sales tax and/or remitted use tax on several exempt transactions.

Mailed: JOSEPH SANDRI
KEYSTONE TAX ASSOCIATES LLC
3800 MARKET ST SUITE 201
PO BOX 1216
CAMP HILL, PA 17001

on May 11, 2023

In support of its contentions, Petitioner provided invoices, a reason code listing, proof of payment for BOA selected sales tax transactions, and exhibits. The BOA found proof of payment sufficient.

The BOA granted partial relief to Petitioner's request in a Decision and Order dated December 22, 2022. The BOA denied relief to the remaining transactions on the basis that Petitioner provided insufficient evidence to establish the exemption, and/or did not meet its burden of proof.

On December 29, 2022, Petitioner filed the present matter at the Board of Finance and Revenue. Petitioner submitted a narrative discussion, reason code listing, appeal schedule, invoices, a service agreement, vendor statements, and software use letters from one of Petitioner's accountants.

Petitioner provides the following argument in support of its contentions:

Computer Services

Petitioner requests a refund of a portion of tax paid on the purchase of computer services/software used outside of Pennsylvania. Petitioner describes these transactions as involving out of state use of cloud-based storage license fees, software support fees, software subscription fees, and software license fees. Petitioner further describes these transactions as involving computer programming and computer consulting.

The BOA denied relief on the basis that the transactions constituted purchases/rentals of or services to taxable tangible personal property, including access to, license to use and installation/ implementation, 72 P.S. §§ 7201(f)(m), 7202, 61 Pa. Code § 60.19, total purchase price 72 P.S. § 7201(g) and 61 Pa. Code §§ 31.2 and 33.2, and/or Petitioner provided insufficient evidence to establish the purchase of server-based software being accessed remotely by users outside of Pennsylvania.

Construction Activities

Petitioner requests a refund of tax paid on purchases of materials used in construction activities. Petitioner describes these transactions as involving the installation of electrical cables in breakers, installation of radiator and replacement of bottom intake air louver, repairs to fire suppression systems, repairs to door/new lever, and repairs to door/knob set and latch.

The BOA denied relief on the basis that Petitioner provided insufficient documentation to establish that the transactions qualify as construction activities and/or repairs to real property pursuant to 61 Pa. Code § 31.11, and/or transactions constitute service to, installation of, or purchase of taxable tangible personal property and/or taxable building maintenance pursuant to 61 Pa. Code § 60.1, and/or taxable transactions not separately stated from potentially nontaxable transactions.

Nontaxable Services

Petitioner requests a refund of tax paid on the employee cost percentage of nontaxable services. Petitioner describes these transactions as involving fire sprinkler system inspections, annual testing of backflow preventer, fire alarm system monitoring fees, and engineering services. Petitioner further describes these transactions as involving new headshots and branding images for website.

The BOA denied relief on the basis that Petitioner provided insufficient evidence to establish nontaxable services/purchases, and/or the transactions constitute taxable building maintenance pursuant to 61 Pa. Code § 60.1.

Out of State Transactions

Petitioner requests a refund of a portion of tax paid on out of state transactions. Petitioner describes these transactions as involving an enterprise IT management and support agreement at its Millvale, New Jersey location. Petitioner provided invoices, a copy of a Master Service Agreement and Statement of Work, and a letter from the vendor's Vice President of Accounting and Finance.

The BOA denied relief on the basis that Petitioner provided insufficient documentation to support the claim that 50% of the services are performed out of state.

Conclusion

Upon review of the evidence and arguments of Petitioner, the Board has reached the following conclusions:

Computer Services

Petitioner is entitled to relief for tax paid on transactions described as computer programming and computer consulting. The provided invoices show charges for computer-related support and troubleshooting. The invoices did not show charges for canned computer software, licenses, or access to software. As a result, Petitioner has provided sufficient evidence to establish that these transactions involve nontaxable computer services.

Petitioner is not entitled to relief for tax paid on software subscription fees from Hyland Software, Inc. Petitioner's software use letter does not identify the number of users of this software, but it states that it is exclusively used in India and Texas. Petitioner is headquartered in Moosic, Pennsylvania, with additional locations in Iowa, New Jersey, and Ohio. Petitioner did not provide any information on the type of software or its company's connection to India or Texas. As a result, Petitioner has not provided sufficient evidence to establish out of state use. Therefore, Petitioner is not entitled to relief.

Petitioner is entitled to relief for a portion of tax paid on the remaining transactions listed under this reason code. Petitioner provided software use letters from its staff accountant and

invoices in support of its argument. The number of licenses purchased, as shown on the invoices, corresponds to the number of users/type of software provided in the software use letters. As a result, Petitioner has provided sufficient evidence to establish that a portion of tax paid on these transactions is allocatable to users located outside of Pennsylvania.

Construction Activities

Petitioner is not entitled to relief for tax paid on any transaction listed under this reason code. The provided evidence was insufficient to establish construction activities or repairs to real property in accordance with 61 Pa. Code § 31.11. The invoices for the transactions described as repairs to fire suppression system showed charges for inspections in connection with maintenance services, which are taxable pursuant to 61 Pa. Code § 60.1(d)(4). For the remaining transactions, Petitioner provided insufficient evidence to establish tangible personal property being affixed to real property so as to become a permanent part thereof or repairs to real property. These transactions constitute taxable building maintenance or service to tangible personal property. Therefore, Petitioner is not entitled to relief.

Nontaxable Services

Petitioner is not entitled to relief for tax paid on certain purchases described as fire sprinkler system inspection and fire alarm monitoring fees. The descriptions on the provided invoices for the sprinkler inspection are vague and unclear. For the transaction described as fire alarm monitoring fees, the invoice shows charges for “fire watch security.” Petitioner did not provide any information as to what work is performed for this service. As a result, Petitioner provided insufficient evidence to determine the taxability of these transactions. Therefore, Petitioner is not entitled to relief.

Petitioner is entitled to relief for tax paid on the remaining transactions listed under this reason code. Petitioner provided invoices, agreements, and vendor statements in support of its argument. The provided evidence was sufficient to establish that these transactions do not involve the transfer of tangible personal property and/or involve services that are not enumerated as taxable.

Out of State Transactions

Petitioner is entitled to relief for tax paid on out of state transactions. Petitioner provided a narrative, invoices, a Master Service Agreement, and a letter from the vendor’s Vice President of Accounting and Finance. Pursuant to the service agreement, the vendor provides network infrastructure services at both of Petitioner’s locations in Moosic, Pennsylvania, and Millville, New Jersey. The provided letter states that 50% of the invoiced charges are allocatable to Petitioner’s Millville, New Jersey, location. As a result, Petitioner has provided sufficient evidence to establish that these transactions involve services performed outside of Pennsylvania in accordance with 61 Pa. Code § 32.5.

The decision codes used by the Board in its relief schedule are as follows:

- E: Entitled to relief.
- W: Withdrawn by Petitioner.
- T1: Insufficient evidence was provided to establish construction activities or repairs to real property pursuant to 61 Pa. Code § 30.11, and/or purchase of/service to tangible personal property.
- T2: Insufficient evidence was provided to determine taxability of the transaction.
- T3: Taxable building maintenance services pursuant to 61 Pa. Code § 60.1.
- T4: Insufficient evidence and information were provided to establish use of software outside of Pennsylvania, including type of software, number of users, and where and how it is accessed.

A decision schedule is attached to this Order in support of the Conclusion.

Accordingly, the Board enters the following:

ORDER

The Department of Revenue shall issue a refund to Petitioner in the amount of \$ [REDACTED] plus appropriate interest, subject to any other outstanding tax obligations owed by Petitioner.

By Order Of The Board Of Finance And Revenue

Jacqueline A. Cook, Chair
Designee for Stacy Garrity, State Treasurer

David R. Kraus, Board Member

Paul J. Gitnik, Board Member

