

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

535.0002

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| In the Matter of the Petition |) | DECISION AND RECOMMENDATION |
| for Redetermination Under the |) | OF HEARING OFFICER |
| Sales and Use Tax Law |) | |
| |) | |
| |) | |
| F--- A--- OF C---, INC. |) | Account No. SY -- XX-XXXXXX |
| |) | |
| <u>Petitioner</u> |) | |

This matter came on regularly for hearing in West Los Angeles, California on February 19, 1975.

Appearing for the petitioner was Mr. S--- R. L---, attorney. Mr. Brown appeared for the Board.

Protested Item
(Period 4/1/70 to 2/1/73)

| | |
|-------------------------|------------|
| Successorship liability | \$5,512.26 |
|-------------------------|------------|

Contentions of Petitioner

The corporation is not the "successor" to the entity that incurred the tax deficiency.

Summary of Petition

The petitioner is a corporation engaged in the business of selling paintings and works of art at retail.

Its protest involves the board's claim that it is liable as a successor for tax deficiencies incurred by a partnership that operated three art galleries in the --- ---, California area.

Under the terms of the parties' agreement, the petitioner acquired an assignment of leases or the right to negotiate new leases for the business premises, furniture and fixtures, tradename, customer lists, and goodwill. It did not acquire any inventory or the accounts receivable of the partnership.

It is contended that in actual practice the corporation did not use the business assets of the permitted taxpayer. According to the taxpayer's representative, the petitioner was required to negotiate new leases, and did not make effective use of most of the other business assets of the partnership. It obtained a new phone number and sales tax permit.

Analysis and Conclusions

The petitioner is liable for the tax deficiency of the partnership if it is a "successor" to the partnership within the meaning of Revenue and Taxation Code 6811, as implemented by Sales and Use Tax Regulation 1702. A person is a successor if he purchases a stock of goods or a business operated by the prior permit holder. His liability for the tax extends to the price paid for these assets unless a tax clearance certificate is obtained (Revenue and Taxation Code section 6812.)

The petitioner did not acquire the inventory of the partnership. Accordingly, the narrow question presented is whether the petitioner acquired the business operated by the partnership.

Section 6013 of the Revenue and Taxation Code defines the term "business" to include "any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or "indirect". It is thus apparent the term "business" is not limited to the tangible personal property assets of a business enterprise but includes all of the intangibles of the business activity.

In the instant matter, the petitioner acquired all of the assets normally associated with a business except the accounts receivable and the inventory. This included the seller's rights to the leases, customer lists, tradename, goodwill and furniture and fixtures, all of which were assigned values.

The accounts receivable due from a particular person are not an essential element of a business. The same is true of inventory, since its purchase and resale are normal incidents of conducting a business.

It is thus apparent that the petitioner acquired all of the essential elements of a business from the partnership. The fact that the petitioner chose not to utilize some of the business assets does not, in our view, warrant a finding that it is not a successor. The successorship liability attaches by reason of the purchase of the business (or stock of goods) and not by reason of its continued operation (see Revenue and Taxation Code section 6812).

Recommendation

It is recommended that the petition for reconsideration of the corporation's successorship liability be denied.

W. E. Burkett Hearing Officer

6-5-91

Date