



STATE BOARD OF EQUALIZATION

February 23, 1972

Attention:

Dear _____,

This is with reference to the petitions filed on behalf of _____ and the hearing held on this matter last January 25 in Downey, California.

There does not appear to be any dispute regarding the facts. From October 1, 1967 to September 19, 1968 _____ operated a dental laboratory as a sole proprietor. He operated under account _____ and reported sales tax on retail sales under that account.

_____ followed a practice of netting fabrication labor from retail sales when computing the sales tax and he only reported and billed tax on materials/

On September 20, 1968 and through September 30, 1969 the business operated as a partnership wherein _____ and your client, _____ were 50-50 general partners. Each partner contributed assets to the commencing partnership. The partnership did not purchase the business from _____ and neither did _____ purchase anything from _____.

The partnership entity reported tax on retail sales in the same way as was done by _____ as an individual proprietor. However, tax was reported and paid under account _____. No permit was ever issued to the partnership entity.

In the course of activities during the partnership operation, there arose the question of use tax liability on one airplane. Before the hearing this was resolved and deleted from any audited liability on the finding that a consumer use tax return was filed with Headquarters, Occasional Sales Unit in Sacramento.

The audited tax liability was computed by using as a test period the months of June, July and August 1969. This was when the business operated as a partnership. It was found that, for reporting purposes, there was a 92.14 percent error on reporting. The error arose as a result of following the practice and not including fabrication labor charges when measuring and billing tax on retail sales. The error factor was applied to all the months that the partnership operated except June, July and August 1969, which were audited on an actual basis.

The error factor was also applied to the amounts reported by _____ as an individual proprietor. The two periods have been separated for billing purposes.

At the hearing the primary issue involved the question of whether your client, _____, was liable for tax that was due the state during the time _____ operated as an individual proprietor on the theory that _____ was a successor to the business and liable under Sections 6811 and 6812 of the Revenue and Taxation Code.

A reading of these two sections clearly indicates that a prerequisite to finding a successor is the finding that he purchased the business. The evidence at hand indicates that no one purchased _____ business. Instead two men each contributed capital in the form of equipment and cash to a commencing general partnership in return for a 50-50 percent interest in the partnership business with no consideration such as assumption of liabilities.

It is our conclusion that neither _____, personally, nor as a partner, was a successor to _____ sole partnership business.

Accordingly, we are recommending that a redetermination, under the closed out account _____ be issued covering the period from October 1, 1967 to September 19, 1968 against _____ personally and that no liability be asserted against _____ as a successor. The audited measure under that account was computed using the test of activities during the partnership operations. However, the amount is not in issue since we have concluded your client is not liable for tax as a successor.

Incidentally, the above measure does not include any amounts paid for the airplane. That has been already deleted from the liability.

In due course, you will be receiving the Notice of Determination. In the interim, if you know the whereabouts of _____, please let us know.

Very truly yours,

Robert H. Anderson
Tax Counsel