

M e m o r a n d u m**320.0240**

To: Mr. Gary J. Jugum

Date: November 22, 1982

From: Robert H. Anderson

Subject: Penalty for Failure to File a Return

Re: Memo dated 11-12-82 from --- to you wherein he makes reference to ---

The question raised by Bob Lively's memo is whether an assessment for failure to file a return may be assessed against a person who did, in fact, file a return but who did not hold a subpermit for a second business location. Returns that were filed included sales at the second location with the exception of one transaction which was a reorganization of that location from the proprietorship person to a corporate person.

The reorganization did not qualify as an occasional sale because the second location did not qualify as a separate business, instead it was part of a unitary business.

A penalty was assessed against --- dba --- for failure to file a return when in fact a return was filed by that person.

Bob Lively cites the Audit Manual as authority for asserting the penalty, and I do not believe this is legally correct. True, it is correct within the framework of section 0503.65 of the Audit Manual, but that is not the law. Further, there is nothing in any of the Board's Regulations which authorize what the Audit Manual instructs auditors to do.

Section 6511 relates to, and authorizes the Board to assert failure to file penalties. Generally, it provides, if any person fails to make a return... etc. etc., a penalty shall apply. In the reference account we have only one person --- and that person did file a return.

I am aware of the statute (Section 6066) that requires the person to file an application for a permit for each place of business, but there is no specific penalty (other than negligence) if that person does not file an application for each place of business.