STATE OF CALIFORNIA
BOARD OF EQUALIZATION

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law

Decisions and Recommendations

Petitioner


Appearing for Petitioner:

Appearing for the Board:

David Slechta, Supervising Auditor

Protested Item

Statement of account issued on November 1, 1976, pursuant to Sections 8611 and 8612 of the Revenue and Taxation Code for the liability of Predecessor, _______, Permit No. _______, Period 4/1/73 to 9/30/75.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax</td>
<td>$6,811.09</td>
</tr>
<tr>
<td>Interest (to 11/30/76)</td>
<td>1,293.45</td>
</tr>
<tr>
<td>Penalty</td>
<td>502.63</td>
</tr>
<tr>
<td>Total</td>
<td>$8,673.17</td>
</tr>
</tbody>
</table>

Petitioner requested and was granted a preliminary hearing by which his position in the matter could be considered.

Summary of Petition

Petitioner is a sole proprietorship engaged in the business of operating a service station.

_______ succeeded to the business of a partnership of _______ and _______ which previously had succeeded to the business of _______, a sole proprietorship.

The history of operations of the service station are as follows:
Period    Permit No.     Operated By
3/12/70 – 5/31/75   ______    ______
6/1/75 – 11/16/75   ______    ______
11/17/75 – Present   ______    ______

According to available information, ______ encountered financial problems during the period of his operation of the station as an individual, and as a result was unable to obtain gasoline from its supplier (______) unless the outstanding debt to ______ was paid. At this point ______ appeared and agreed to pay ______ outstanding debt to ______ for a 50% interest in ______ business, which was to be reorganized as a partnership of ______ and ______. The debt to ______ was paid by _____ in May 1975.

______ permit was closed-out on 5/30/75 and a new permit, ______ was issued to the partnership of ______ with a starting date of 6/1/75 under which the operations of the station were continued at the same location.

A close-out audit, dated 6/17/76, of the operations of ______ under his individual seller’s permit disclosed a substantial liability for unreported taxes in addition to liability for unpaid no-remittance returns filed for the months of January, February, March and May, 1975.

The operations of the partnership apparently were not profitable and the permit was close-out on 11/16/75 with _____ continuing the operations as a sole proprietorship under ______ effecting 11/17/75. Substantial unpaid tax liability was also determined against the partnership for the period of its operations.

On November 1, 1976 Statement of Account was issued to _____ successor to ______.

Statement of Account dated November 4, 1976 also was issued to the partnership as successor to ______.

Statements of Account were also issued to _____ and to Mr. ______ in their individual capacities for the liability of the partnership as a result of its own operations and as successor to ______.

______ has conceded responsibility for the liability occasioned by the operations of the partnership and that accruing during the period of his individual operations but denies responsibility for the liability determined against _____ during his individual operations of the business under Permit No. ______. _____ also contends that the partnership is not liable as a successor for _____ liability. A separate petition has been filed by _____ with respect to the issue of successor liability as it applies to the partnership. That issue is the subject of a separate report to be written.

In the instant case _____ contends he is not the successor to ______ and accordingly is not responsible for _____ liability.

It is argued that:
1. ______ did not sell his stock of goods or business since there was in fact nothing to sell. ______ at best was securing an opportunity to profit in the operation of a gas station by paying outstanding creditors, which included ______ and the State Board of Equalization.

2. ______ complied with the requirement of Section 6811 in that he paid directly to the State Board of Equalization the amount of tax computed to be due at the time from ______.

3. ______ nor the partnership received anything of value from ______ which could have been taken by the State to satisfy ______ tax liability.

According to Petitioner, on about May 26, 1975, ______ visited the office of the Board (Hollywood) and talked to Mr. Beebe, (a tax representative) about ______ tax account. ______ was told that the May payment was outstanding in the amount of $877.00. ______ further advised that ______ had sufficient security to cover any other outstanding liabilities. On June 1, 1975, ______ visited the Board office again and confirmed the $877.00 delinquency and was again told that that was the extent of ______ liability. ______ paid that amount on ______ account and a new account number was issued for the ______ partnership.

The Board’s staff has no written record of the above conversation with ______ and the persons involved have no recollection of what was said. However, the record does show that no remittance returns were filed for January, February and March of 1975 with the unpaid liability greatly in excess of $877.00 as of May 26, 1975, as follows:

<table>
<thead>
<tr>
<th>Month</th>
<th>Tax</th>
<th>Int.</th>
<th>Pen.</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 1975</td>
<td>$905.25</td>
<td>$22.65</td>
<td>$90.53</td>
<td>$1,018.47</td>
</tr>
<tr>
<td>February 1975</td>
<td>882.38</td>
<td>17.64</td>
<td>88.24</td>
<td>988.26</td>
</tr>
<tr>
<td>March 1975</td>
<td>914.28</td>
<td>13.43</td>
<td>91.43</td>
<td>1,019.42</td>
</tr>
</tbody>
</table>

(Interest above computed July 31, 1975)

Security deposit in the amount of $1,875.00 had been posted by ______.

No remittance return for the month of May 1975 in the amount of $995.88 in unpaid tax also was filed.

The close-out audit liability was not established until 6/17/76.

Analysis and Conclusion

Section 6811 of the Revenue and Taxation Code provides:

“If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owners produces a receipts from the Board showing that it has been paid or a certificate stating that no amount is due.”

Section 6812 provides in relevant par as follows:
“If a purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money.”

The argument that ______ did not sell his stock of goods or business since there was nothing to sell, cannot be sustained.

While there is no record of the value of any inventory, gasoline, parts, oil, accessories, etc. in the possession of ______ at the time of the sale of the one-half interest to ______ there was a “business.”

“‘Business’ includes 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.” Section 6013, Revenue and Taxation Code.

_______ purchased one-half interest in the business of ______ and qualifies as a successor within the meaning of Sections 6811 and 6812 of the Revenue and Taxation Code. The amount paid by ______ to ______ on behalf of ______ constituted the purchase price required by statute to be withheld to cover the unpaid tax liability.

The fact that ______ paid an amount to the Board which he allegedly understood to be the total liability due under ______ account does not meet the requirement of Section 6812 for release of personal liability.

It is concluded that ______ is liable as a successor, for the tax liability of ______ to the extent of the purchase price for his interest in ______ business.

**Recommendation**

The Petitioner should remain liable as a successor to the extent of the purchase price paid for his interest in the business of ______.
In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law

Petitioner


This matter was heard in conjunction with the petition of ______.

Appearing for the Petitioner:

Appearing for the Board:

David Slechta, Supervising Auditor

Pursuant to a State of Account for successor’s liability issued to the partnership of ______ and ______ dated November 14, 1976, for the liability determined against the Predecessor in business, requested a hearing which was granted in this matter.

The liability shown by the Statement of Account is as follows:

<table>
<thead>
<tr>
<th>Tax</th>
<th>Interest</th>
<th>Penalty</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>$4,866.52</td>
<td>$958.61</td>
<td>$502.63</td>
<td>$6,237.76</td>
</tr>
</tbody>
</table>

Petitioner’s Contention

Petitioner contends that it is not a successor within the meaning of Sections 6811 and 6812 of the Revenue and Taxation Code and accordingly is not responsible for the liability determined against ______ (an individual proprietorship).

Summary of Petition

The underlying facts for this petition are the same as set forth in the decision prepared on this date for the petition of ______, account No. ______ which is incorporated herein by reference.

Analysis and Conclusion

Petitioner, a partnership did not purchase a business or stock of goods from ______ but was organized through contribution to it ______ and ______ of their respective interests as co-
owners of the business previously operated by ______. Accordingly, Petitioner’s partnership is not a successor within the meaning of Sections 6812 and 6811 of the Revenue and Taxation Code.

**Recommendation**

That the Statement of Account issued to the partnership of _____ and _____ be cancelled.

Joseph Manarolla, Hearing Officer

6/14/77

Date

REVIEWED FOR AUDIT:

__________________________
Principal Tax Auditor

__________________________
Date