

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

410.0193

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| In the Matter of the Petition |) | |
| for Redetermination Under the |) | DECISION AND RECOMMENDATION |
| Sales and Use Tax Law |) | |
| |) | |
| A--- & S---, |) | No. S- -- XX-XXXXXX-010 |
| A Partnership |) | |
| |) | |
| <u>Petitioners</u> |) | |

The above entitled matter came on regularly for hearing on March 12, 1987, in Van Nuys, California, before W. E. Burkett, Hearing Officer.

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| Appearing for Petitioners: | No Appearances |
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| Appearing for the Board: | Jack Infranca Audit Supervisor |
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| <u>Protested Item</u> | <u>Measure</u> |
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| Dual determination for liability of successor Corporation, A--- & S--- Inc. | \$231,542 |
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Contentions of Petitioners

1. The Board received notice that the corporation was conducting business.
2. The tax determined against the corporation was excessive.

Summary of Petition

The petitioners were a partnership that operated a retail business. The partnership was succeeded by a corporation formed by the partners and continued to operate in corporate form until the corporation was adjudicated to be bankrupt under Chapter 7 of the Federal Bankruptcy Act.

A dual determination has been issued against the partners on the basis that they allowed the partnership permit to be used by the corporation resulting in liability under the provisions of Sales and Use Tax Regulation 1699.

The petitioners contend that the Board was supplied with notice by the issuance of corporate checks for the payment of returns and by the issuance of resale certificates by the corporation.

The petitioners have also contended the merits of the tax deficiency determined against the corporation but have failed to provide any additional evidence to support exemption. The measure of tax deficiency determined against the corporation consisted primarily of disallowed sales for resale.

Analysis and Conclusions

The application of the tax to the predecessor partnership is governed by the provisions of Sales and Use Tax Regulation 1699 which reads in pertinent part as follows:

“(3) Inactive Permits. A permit shall be held only by persons actively engaging in or conducting business as a seller of tangible personal property. Any person not so engaged shall forthwith surrender his permit to the board for cancellation. The board may revoke the permit of a person found to be not actively engaged in or conducting a business as a seller of tangible personal property.

Upon discontinuing or transferring a business, a permit holder shall promptly notify the board and deliver his permit to the board for cancellation. To be acceptable, the notice of transfer or discontinuance of a business must be received in one of the following ways:

(1) Oral or written statement to a board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the board, if lost, destroyed or is unavailable for some other acceptable reason, but notice of cessation of business must be given.

(2) Receipt of the transferee or business successor’s application for a seller’s permit may serve to put the board on notice of the transferor’s cessation of business.

Notice to another state agency of a transfer or cessation of business does not in itself constitute notice to the board.

Unless the permit holder who transfers the business notifies the board of the transfer, or delivers the permit to the board for cancellation, he will be liable for taxes, interest and penalties (excluding penalties for fraud and intent to evade the tax) incurred by his transferee who with the permit holder’s actual or constructive knowledge uses the permit in any way; e.g., by displaying the permit in transferee’s place of business, issuing resale certificate showing the number of the permit thereon, or filing returns in the name of the permit holder or his business name and under his permit number. The liability shall continue and include all liability incurred up to the time the board receives notice of the transfer.”

The petitioners allowed the corporation to display and use the partnership's permit in the operation of the corporations' business during the entire audit period. The partners are therefore liable under the above quoted provisions of Regulation 1699 unless appropriate notice of the discontinuance of the partnership was given.

It is our considered conclusion that the payment of liability with a corporation check does not constitute the type of notice contemplated as a basis for relief from liability.

These checks are processed in mass by clerical personnel, and it is unlikely that the different entity on the check would be noticed. Further circumstances of the mailing also were not calculated to give notice of the change in business form. Similarly, the listing of a corporate name on resale cards cannot be reasonably construed as giving notice to the Board. These resale cards are directed to other retailers for another purpose and may not even be examined by a representative of the Board.

Recommendation

It is recommended that the taxes be redetermined without adjustment.

W. E. Burkett, Hearing Officer

7-8-87
Date