

**STATE BOARD OF EQUALIZATION**

September 28, 1964

[X]

Attention: [X]

Gentlemen:

Your petition for redetermination dated August 6, 1964, has been referred to the legal staff. It is hoped that the matter can be resolved through correspondence.

A review of the file indicates that at the time of the completion of the audit report, you disagreed only with the disallowance of a bad debt deduction in connection with certain sales to [X] and with the 10 per cent negligence penalty. Your letter of August 18 states, however, that the corporation is protesting the entire amount of the determination. Since the measure of liability (without considering the bad debt claim) represents sales of printed materials on which you collected tax reimbursement from your customers, it is difficult to see the justification for your position.

The bad debt claim, as we understand it, relates to sales to [X] in the amount of \$25,680, which amount was paid by [X] to the former president of the corporation, Mr. [Y]. It is your contention that the debt was not legally collected from [X] because the funds were illegally diverted by Mr. [X]. Assuming this were true, the corporation nevertheless would not be entitled to a bad debt deduction since it has not been established that the purported debt of [X] is "worthless." The fact that the corporation may have suffered a loss due to the diversion of funds by a corporate office would not, of course, furnish a basis for a bad debt deduction for sales tax purposes. The deduction may be taken only with respect to debts arising from retail sales.

The 10 per cent negligence penalty was imposed because the corporation failed to report some 87 ½ per cent of its sales during the audit period. Sales of printed matter were not reported at all during the period of April 1, 1961, through March 31, 1963. On all such sales, however, tax reimbursement was charged to customers.

It is our opinion that these facts amply support the imposition of a negligence penalty. We do not believe such negligence can be excused merely because the accountant was preoccupied with other accounts and was ill for lengthy periods. Even after the change in accountants, no effort was made to report the previously unreported sales, although tax was reported on sales of the same nature after March 31, 1963.

[X]

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From a consideration of all of the information at hand, we must conclude that the determination is correct. If you have any additional information to present in support of the petition for redetermination, please advise us within 30 days.

Very truly yours,

Patricia McKinney
Assistant Counsel

PM:spg

cc: Long Beach – Subdistrict Administrator