



STATE BOARD OF EQUALIZATION

November 15, 1963

---, ---, ---
and ---
Attorneys at Law
--- --- and --- ---
---, California

C-XXXXXX
E--- M--- B---

Attention: Mr. J--- B---

Gentlemen:

This is to advise you of our conclusions and intended recommendations on the above named taxpayer's petition for redetermination on sales and use tax for which a preliminary hearing was held in Oakland on June 25, 1963.

You have contended that your client was not the real party in interest for the business for which she took out a sales tax permit since she was induced through the fraud of J--- and A--- K--- to obtain the permit for their business operation. Therefore, you have reasoned that your client should not be liable for tax liability incurred under this permit.

We have reviewed the file on this matter in the light of information obtained at the preliminary hearing and the copy of the agreement between the petitioner and the K--- subsequently provided by you. We have concluded that there is no basis for adjustment for the amount to be determined.

While the evidence seems to bear out your contention that the K--- were, in fact, principals in the business operation, it also shows that petitioner was a district manager for these parties and apparently had full authority to make sales. It is a well recognized rule of law that in order for an agent to excuse himself from responsibility on the grounds of agency, he must disclose his principal, so as to enable the party with whom he deals to have recourse to the principal. Your client failed to do this and, therefore, it is our opinion that she is personally liable.

---, ---, ---
and ---
Re: C-XXXXXX

-2-

November 15, 1963
410.0160

The fact that your client may have been persuaded to take out a sales and use tax permit and perform other acts based upon her reliance upon the fraudulent representations of others is no basis for relieving her from the tax. The very acts which gave rise to her liability for the tax were done of her own volition. We believe that when a person takes out a sales tax permit and signs as owner of that business, the board has a right to rely upon these representations.

For the reasons set forth above, we shall recommend that your client's petition for redetermination be denied. Your client will be advised in due course of final action taken on this matter.

Very truly yours,

W. E. Burkett
Associate Tax Counsel

WEB:md

cc: Oakland – District Administrator

Attached are two copies of hearing officer's report dated November 8, 1963, which has been approved. This hearing was held in Oakland on June 25, 1963.