CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matters of the Administrative Protest and Claim for Refund Under the Sales and Use Tax Law of: JASWINDER KAUR, dba Liquor Zone Taxpayer	Account Number SR DF 100-740196 Case ID's 537383, 699250 Fresno, Fresno County

Type of Business: Liquor store

Audit period: 05/04/06 – 03/31/09

Item	Disputed Amount
Determined tax	$75,711
Negligence penalty	$7,571

Tax, as determined and protested	$75,710.80
Interest	20,095.38
Negligence penalty	7,571.12
Total tax, interest, and penalty	$103,377.30
Payments	-103,377.30
Balance	$ 00.00

This matter was scheduled for Board hearing in April 2014, but was postponed at taxpayer's request for additional time to prepare.

UNRESOLVED ISSUES

Issue 1: Whether taxpayer is responsible for the audit liability. We find that taxpayer is responsible.

On April 25, 2006, taxpayer applied for a seller's permit to operate a liquor store with an effective start date of May 4, 2006. On the permit application, taxpayer stated that she was subleasing the business from the prior owner, but on June 19, 2006, taxpayer notified the Sales and Use Tax Department (Department) that she was purchasing the business for $50,000, excluding any fixtures or equipment. At the appeals conference, taxpayer stated that the sale fell through due to an issue with transferring the liquor license, but she did not close her seller's permit because she did not want to lose her security deposit. On May 1, 2009, taxpayer informed the Department that she had completed her purchase of the business that she previously had been leasing from her predecessor.

For audit, taxpayer provided her federal income tax return for 2006, and merchandise purchase invoices for the period January 1, 2009, through March 31, 2009, but stated that all other records were destroyed in a flood. The Department prepared a markup analysis in which it compared taxpayer's shelf prices with costs from available purchase invoices to compute an audited markup of 27.90 percent. The Department computed audited costs of taxable goods sold for 2008 from information obtained from taxpayer's vendors, and then added the audited markup to the audited costs to compute audited taxable sales of $426,735 for 2008, which exceeded reported taxable sales for 2008 by $280,788, representing an error ratio of 192.39 percent. The Department applied the error ratio to reported taxable sales for the audit period to establish unreported taxable sales of $931,102.

Taxpayer no longer disputes the computation of audited taxable sales. Instead, she argues that, prior to May 1, 2009, her predecessor actually owned and operated the business, and she should not be held responsible for the audit liability.

Here, taxpayer signed and completed the application for a seller's permit with an effective start date of May 4, 2006. As the holder of a seller's permit, taxpayer is liable for the tax from any retail sales made under that permit. Furthermore, copies of taxpayer's sales and use tax returns for five quarters during the audit period show that taxpayer signed the returns filed for two of those quarters. Although the other three returns were unsigned, the remittances appear to have been made from taxpayer's checking account. We find that taxpayer's signature on sales tax and use tax returns as well as payments from her checking account are a direct representation to the Board that taxpayer was operating a business under her seller's permit and making retail sales of tangible personal property. Even if taxpayer did not own the business, but instead was leasing the business from the predecessor, we conclude that she made retail sales under her own seller's permit, and thus is liable for the tax.

Issue 2: Whether taxpayer was negligent. We conclude that she was.

The Department imposed the penalty because taxpayer did not retain any records of her sales, such as cash register tapes or sales summaries, and because the understatement is large relative to reported taxable sales. Additionally, since taxpayer held three other seller's permits for similar businesses, the Department found that taxpayer had sufficient business experience to maintain adequate records and to report her sales accurately.

Taxpayer opposes the negligence penalty on the grounds that she was not the owner of the business. Additionally, taxpayer contends that her failure to provide records was due to a flood at the business that damaged or destroyed her records, and was not due to negligence.

A comparison of unreported taxable sales of $931,102 with reported taxable sales of $483,997 shows a reporting error rate of 192.38 percent. We find that taxpayer's failure to report almost two-thirds of her taxable sales is strong evidence of negligence in reporting. Although taxpayer claims that she maintained books and records, but her records were destroyed in a flood caused by a bathroom leak, taxpayer provided no documentary evidence of water damage, such as an insurance claim or photographs of the damage. In the absence of evidence that a flood that could have destroyed taxpayer's records occurred at the business location, we find that taxpayer's failure to provide any records of her sales is strong evidence of negligence in recordkeeping. Thus, even though taxpayer had not been audited previously, we find that she was negligent and the penalty was properly imposed.

RESOLVED ISSUE

At the appeals conference, taxpayer stated that she does not protest the audited amounts of unreported taxable sales, unreported taxable costs of self-consumed merchandise, unreported taxable cigarette rebates, or the unclaimed exempt sales of taxable merchandise paid for with food stamps. Also, taxpayer had initially protested the imposition of a finality penalty of $7,571.08. Taxpayer entered into an installment payment agreement with the Department, and, as agreed, the finality penalty was relieved when the tax and interest were paid in full.

OTHER MATTERS

Between August 12, 2010, and June 15, 2013, taxpayer made 35 payments totaling $103,377.30, which paid the liability in full. With the exception of a payment of $14,989.62 on December 8, 2010, which was collected by a bank levy, all of the payments were made voluntarily. Taxpayer filed six claims for refund (case ID 699250). The first claim for refund was filed on October 10, 2012, and was timely for the involuntary payment of $14,989.62 and for four payments of $1,000 each from June 15, 2012, through September 15, 2012, but was not filed timely for 21 payments totaling $74,721.18 made prior to June 15, 2012. The remaining five claims for refund were timely for eight payments of $1,000 each from October 15, 2012, through May 15, 2013, and a payment of $666.50 made on June 15, 2013. In sum, claims for refund were filed timely for 14 payments totaling $27,656.12, but were not filed timely for 21 payments totaling $74,721.18. However, we find no evidence of any overpayments subject to refund.

Summary prepared by Lisa Burke, Business Taxes Specialist III