STATE BOARD OF EQUALIZATION
CALIFORNIA TIRE FEE APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination and Claim for Refund Under the California Tire Fee Law of: DANIEL FRANK ALLEN, dba Chico Truck & R.V. Petitioner	Account Number RB STF 45-108060 Case ID's 546385, 547969 Chico, Butte County

Type of Business: Sales of utility trailers

Audit period: 04/01/02 – 06/30/09

Item	Disputed Amount
Unreported California tire fee	$9,115
Relief of interest	$2,150

	Fee	Penalty
As determined	$9,536.00	$953.62
Post-D&R adjustment	00.00	- 953.62
Proposed redetermination	$9,536.00	$ 00.00
Less concurred	- 421.00	
Balance, protested	$9,115.00	

Proposed fee redetermination	$ 9,536.00
Interest	2,149.88
Total tax and interest	$11,685.88
Payments	- 9,536.00
Balance Due	$ 2,149.88

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported California tire fee. We find no adjustment is warranted.

Petitioner has sold utility trailers since November 2003, although he has held a seller's permit since January 1998. During an audit, the Property and Special Taxes Department (Department) found that, although petitioner sold tires subject to the tire fee, he had not obtained a California tire fee account. To calculate the tire fee for the period April 1, 2002, through December 31, 2009, the Department examined records of the Department of Motor Vehicles (DMV), petitioner's summary

sales data, and supporting invoices.[1] The Department found that petitioner had sold 5,733 tires during the audit period, and it computed an amount due, net of the reimbursement to the retailer, of $9,536.00. Petitioner paid that amount in full to stop the accrual of interest, but he protests $9,115.00 of the amount determined.

Petitioner does not sell tires other than those that are sold with trailers, and he contends that he should not be held liable for the tire fee with respect to any sales of tires prior to July 2009. Petitioner asserts that it was not until July 2009, in Publication 91, "California Tire Fee," that the Board specifically explained that tires sold with towable trailers are subject to the fee. Further, petitioner argues that he was never properly notified by the Board that the California tire fee applied to his sales of tires, because, if he had been notified, he would have gladly charged and collected the fee for every tire sold beginning in July 2009.

It is undisputed that petitioner sold towable trainers during the audit period, and the number of tires sold is not disputed. Effective January 1, 2001, the California tire fee is due for every new tire sold with a new or used motor vehicle, which includes towable trailers. (Pub. Resources Code, §§ 42885, subd. (g) and 42803.5.) New tires sold with motor vehicles became subject to the fee, effective January 1, 2001, as a result of the language of Senate Bill 876 which was passed by the California legislature in 2000. Thus, petitioner's sales of tires with utility trailers were subject to the tire fee throughout the audit period. Further, while Publication 91, issued in July 2009, offered further clarification that tires sold with towable trailers are subject to the fee, it did not represent that the explanation in the publication addressed a change in the law. Accordingly, we reject petitioner's argument that tires sold with towable trailers prior to July 2009 were not subject to the fee.

Moreover, there is no provision in the Fee Collection Procedures Law or the California Tire Recycling Act that relieves a taxpayer from liability based on ignorance of the law. Accordingly, there is no basis for relief because publications issued prior to July 2009 did not specifically reference tires sold with towable trailers. Further, petitioner's assertion that the Board did not properly notify him

[1] Although the audit period begins April 1, 2002, the Notice of Determination includes no tire fee for the year 2002 and a tire fee of only $46 for the year 2003.

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about the fee has no effect on petitioner's liability for the fee. Moreover, we note that the June 2001 Tax Information Bulletin sent to retailers who held seller's permits explained that, as of January 1, 2001, the tire fee was applicable to sales of tires on new or used vehicles. Thus, petitioner did receive notification of the law change prior to July 2009.

In summary, we find that petitioner is liable for the tire fee for the entire audit period, and there is no basis for adjustment. Since we recommend no adjustment, and the amount paid does not exceed the amount due, we recommend that the claim for refund be denied.

Issue 2: Whether relief of interest is warranted. We find no basis for relief of interest.

Petitioner requests relief of the interest for the same reasons that he requests a refund of tire fees paid for the period April 1, 2002, through June 30, 2009. Specifically, petitioner requests relief on the basis that he was never informed of the tire fee program and that the tire fee does not apply to his sales of tires on towable trailers prior to July 2009. For fees incurred after July 2009, petitioner requests relief of interest, stating that he would have gladly remitted those fees timely if he had known they were due.

The application of interest to determinations of understatements of reported taxes or fees is mandated by statute, and relief may be granted only in limited circumstances. In this case, the only possible basis for relief would be an argument that petitioner's failure to remit the tire fee was the result of unreasonable error or delay by a Board employee. There is no evidence to that effect, particularly since petitioner began selling towable trailers in 2003, but he never contacted the Board to inform it of his change in business. Accordingly, we find that relief of interest is not warranted.

RESOLVED ISSUE

The Notice of Determination issued to petitioner included a penalty for failure to file returns. After the appeals conference, the Department concluded that petitioner's failure to file returns was due to reasonable cause. We concur, and we recommend relief of the failure-to-file penalty.

OTHER MATTERS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III