

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for)
 4 Redetermination under the Cigarette and)
 Tobacco Products Tax Law of:)
 5) Account Number CP STF 50-004116
 E.M. FRANSIS ENTERPRISES, INC.) Case ID 588145
 6)
 7 Petitioner) Huntington Beach, Orange County

8 Type of Business: Cigarette and tobacco products retailer

9 Audit period: 07/01/08 – 10/31/09

<u>Item</u>	<u>Disputed Amount</u>	
10 Disallowed claimed distributions in interstate commerce	\$121,311	
11 Negligence penalty	\$ 14,219	
	<u>Tax</u>	<u>Penalty</u>
13 As determined and proposed to be redetermined	\$142,191.55	\$14,219.17
14 Less concurred	- 87,443.89	<u>00.00</u>
Balance, protested	<u>\$ 54,747.66</u>	<u>\$14,219.17</u>
15 Proposed tax redetermination	\$142,191.55	
16 Interest through 11/25/14	55,786.76	
Negligence penalty	<u>14,219.17</u>	
17 Total tax, interest, and penalty	<u>\$212,197.48</u>	
18 Monthly interest beginning 11/26/14	<u>\$ 710.96</u>	

19 UNRESOLVED ISSUES

20 **Issue 1:** Whether adjustments are warranted to the amount of disallowed claimed exempt
 21 distributions of tobacco products in interstate commerce. We find no adjustment is warranted.

22 Petitioner operates a grocery store, and it held a California Distributor's license from
 23 September 1, 2006, through October 31, 2009. Petitioner distributed hookah tobacco to wholesalers
 24 and retailers both within California and out of state. Petitioner states it purchased most of its hookah
 25 tobacco from another California supplier. Some of petitioner's sales were to out-of-state customers,
 26 and those products were delivered either from petitioner's business or from its supplier's warehouse.

27 In an audit, the Property and Special Taxes Department (Department) found that petitioner's
 28 tobacco purchase invoices were incomplete. Accordingly, the Department relied on vendor reports

1 provided by petitioner's supplier to establish the amount of distributions of tobacco products, which
2 exceeded reported distributions by \$193,759.52 (not disputed by petitioner).

3 Petitioner had claimed exempt distributions in interstate commerce of \$121,311 for the audit
4 period, but it was unable to provide evidence that the tobacco products had been delivered to out-of-
5 state locations. Consequently, the Department disallowed all of petitioner's claimed exempt
6 distributions in interstate commerce.

7 Petitioner disputes the Department's conclusion, contending that it possesses sufficient
8 documentation to support three separate exempt distributions of tobacco products to locations outside
9 California. For each of the three sales, petitioner concedes that the sale may have taken place in
10 California for purposes of the Cigarette and Tobacco Products Tax Law. Petitioner also concedes that
11 it does not have bills of lading or other pertinent documentation to show out-of-state delivery, and has
12 stated that petitioner was not a party to any delivery contracts because the purchasers either sent their
13 own trucks to pick up the tobacco products or hired trucking companies themselves.

14 Although petitioner acknowledges that it was not aware of the requirements for verifying out-
15 of-state distributions of tobacco products for excise tax purposes, it asserts that the documentation it
16 has provided is sufficient. Petitioner has provided no bills of lading or other shipping documents that
17 show out-of-state delivery. Instead, petitioner has provided various documents (e.g. sales invoices,
18 evidence of payments by the purchasers, and letters from the business owners) to show that it made
19 sales to Baroody Imports, Inc. of Clifton, New Jersey, to Barak Bakery and Supermarket, Inc. of
20 Nashville, Tennessee, and to Basha International Foods of Buffalo, New York. Petitioner concedes
21 that the purchasers hired vehicles that picked up the hookah tobacco in California, either at petitioner's
22 business location or at the warehouse of its supplier. Further, the evidence confirms that delivery of
23 the hookah tobacco to each of the purchasers took place in California. Therefore, petitioner has not
24 shown that the tobacco products were shipped to a point outside California by the seller pursuant to a
25 sales contract, and thus has not documented that the sales were exempt distributions in interstate
26 commerce. (Cal. Code Regs., tit. 18, § 4080, subd. (a).) Accordingly, we find no adjustments are
27 warranted to the disallowed claimed exempt distributions in interstate commerce.

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