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CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Petition for Redetermination Under the Cigarette and Tobacco Products Tax Law of: AKOP JACK CHICHYAN, VICKEN DJEREDJIAN, and MNATSAKAN MIKE GRIGORYAN Petitioner	Case ID: Oral hearing date: Decision rendered : Publication due by:	388129 November 15, 2012 August 18, 2014 December 16, 2014

Representing the Parties:

For Petitioner: Abe Golomb, Representative

For Sales and Use Tax Department: Pamela Mash, Tax Counsel

For Appeals Division: Jeffrey G. Angeja, Tax Counsel IV

LEGAL ISSUE 1

Whether Messrs. Akop Chichyan, Vicken Djeredjian, and Mnatsakan Grigoryan operated as a partnership.

FINDINGS OF FACT AND RELATED CONTENTIONS

On December 11, 2006, the Board's Investigations and Special Operations Division (ISOD) issued a Notice of Determination (NOD) to the alleged partnership of Akop Chichyan, Vicken Djeredjian, and Mnatsakan Grigoryan (petitioner) for the period October 1, 2000, through February 28, 2002, for $3,262,500 in tax, plus applicable interest, an $815,625 fraud penalty, and a $326,250 failure-to-file penalty. The NOD is based on ISOD's finding that petitioner made unreported purchases of 75,000,000 sticks of untaxed cigarettes[1] from unlicensed out-of-state vendors (for which excise tax is assessed at $0.0435 per stick), for distribution in California.

ISOD alleges that, from October 2000 until February 2002, petitioner operated as an unregistered and unlicensed cigarette distributor. According to ISOD, petitioner acquired untaxed

[1] A carton of cigarettes contains 10 packs of cigarettes, and a pack of cigarettes contains 20 cigarette sticks. Therefore, 75,000,000 cigarette sticks represents 375,000 cartons of cigarettes.

cigarettes in Virginia on various occasions and transported the cigarettes to California for distribution, as well as to other unknown business locations. ISOD relies upon a federal indictment filed against Akop Jack Chichyan, Vicken Djeredjian, and Mnatsakan Mike Grigoryan, among others, in the United States District Court for the Western District of Virginia (Criminal No. 7:03CR00049), for the illegal possession and transportation of contraband cigarettes and money laundering (indictment).

According to the indictment, Messrs. Chichyan, Djeredjian, and Grigoryan, acting in concert with each other, were the principal participants in negotiating, setting up, funding, and arranging transportation for all the cigarette transactions at issue herein with special agents from the U.S. Department of Justice, Bureau of Alcohol, Tobacco, and Firearms (ATF), acting in an undercover capacity. The indictment alleges that Messrs. Chichyan, Djeredjian, and Grigoryan made 32 trips between Virginia and California, and other states, and during those trips purchased approximately 108,060,000 untaxed (unstamped) cigarettes for $8,993,448, with an approximate retail value of $18,570,111. The indictment indicates that 75,000,000 of the untaxed cigarettes were loaded for transportation to and distribution in California.

Specifically, the indictment indicates that, during the 32 trips between Virginia and California, Mr. Chichyan and Mr. Djeredjian negotiated numerous transactions with both undercover ATF agents and individuals cooperating with the ATF to purchase anywhere from 12 to 800 cases of cigarettes (144,000 to 9,600,000 cigarette sticks) during *each* transaction. Messrs. Chichyan, Djeredjian, and Grigoryan then paid for the cigarettes using cash, cashier's checks, and over 3,700 bearer money orders, mostly in $500 denominations. The indictment further states that Messrs. Chichyan, Djeredjian, and Grigoryan used various businesses to transport the cigarettes and created false documents (including false or dummy invoices) to hide the illegality of the transactions. The indictment provides the specific dates of each of the purchases and of the transportation of the cigarettes to California, among other places, as well as the names of the individual parties who negotiated the transactions, paid for the cigarettes, and loaded them for transportation.

On April 9, 2003, Messrs. Chichyan, Djeredjian, and Grigoryan were arrested and thereafter, on an unknown date, Messrs. Chichyan and Grigoryan pled guilty to conspiracy to possess and

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transport illegal cigarettes,[2] and Mr. Djeredjian pled guilty to possession and transportation of illegal cigarettes.[3]

Based on the federal indictment and the guilty pleas, ISOD determined that a partnership existed between the three men and that the partnership transported 75,000,000 untaxed cigarettes to California and distributed them in California. Consequently, ISOD found that petitioner is liable for the applicable excise tax as a cigarette distributor in California.

On appeal, petitioner argues that the NOD is invalid because a partnership never existed between Messrs. Chichyan, Djeredjian, and Grigoryan. Petitioner contends that the cigarette purchases were made by Messrs. Chichyan, Djeredjian, and Grigoryan as officers and/or employees of a different company (Grand Distribution Company, USA, Inc. (GDC)), for which Mr. Chichyan was an officer and Mr. Djeredjian was a manager. In support, petitioner produced an invoice dated November 26, 2001, issued by Southwest Tobacco Sales, Inc. (a vendor located in Virginia) to GDC for 500 cases of cigarettes (invoice). Petitioner argues that ISOD has not established the existence of a partnership and that the NOD should have been issued to the related company, not to petitioner.

In rebuttal, ISOD relies on the indictment to prove that a partnership existed. The indictment indicates that on or about November 16, 2001, during one of the transactions with an undercover ATF agent, Mr. Grigoryan stated that "he, Djeredjian, and Chichyan were partners and that he (Grigoryan) handled the transportation." In addition, ISOD points out that the indictment indicates that, for the numerous transactions at issue, both Mr. Chichyan and Mr. Djeredjian negotiated and paid for the cigarettes and Mr. Grigoryan, after personally obtaining from the undercover agents the cigarettes that had been negotiated and paid for by Mr. Chichyan and Mr. Djeredjian, drove the trucks with the cigarettes from Virginia into California.

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[2] Count 1 of the indictment alleges conspiracy to possess and transport contraband cigarettes under 18 U.S.C. § 371, which states, in relevant part, that "[i]f two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both." The elements of this crime are: (1) agreement by two or more persons to combine efforts to achieve an illegal purpose or to use illegal means to accomplish a legal purpose; and (2) an overt act by at least one of those persons in furtherance of the conspiracy. (*United States v. Fontenot* (5th Cir. 1973) 483 F.2d 315, 321.)

[3] Count 28 of the indictment alleges possession and transportation of contraband cigarettes under 18 U.S.C. § 2342, subdivision (a), which states that "[i]t shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes or contraband smokeless tobacco."

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APPLICABLE LAW

The Cigarette and Tobacco Products Tax Law (Law) requires every person desiring to engage in the sale of cigarettes or tobacco products to apply with the Board for a distributor's license. (Rev. & Tax. Code, § 30140.) The Law additionally imposes upon every distributor a tax, based on the wholesale cost of the tobacco products, upon the distribution of tobacco products. (Rev. & Tax. Code, §§ 30101, 30123, 30131.2.) "Distributor" includes every person who distributes tobacco products, or who sells or accepts orders for tobacco products that are to be transported from a point outside this state to a consumer within this state. (Rev. & Tax. Code, § 30011.) The term "distribution" includes (1) the sale of untaxed cigarettes or tobacco products in this state, (2) the "use or consumption" of untaxed cigarettes or tobacco products in this state, and (3) the placing in this state of untaxed cigarettes or tobacco products in a vending machine or in a retail stock for the purpose of selling the products to consumers. (Rev. & Tax. Code, § 30008.) "Use or consumption" includes the exercise of any right or power over tobacco products incident to the ownership thereof, other than the sale of the tobacco products or the keeping or retention thereof by a licensed distributor for the purpose of sale. (Rev. & Tax. Code, § 30009.) Unless the contrary is established, it shall be presumed that all tobacco products acquired by a distributor are untaxed tobacco products, and that all tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed. (Rev. & Tax. Code, § 30109.)

A partnership is an entity distinct from its partners (Corp. Code, § 16201) and, generally, is defined as an association of two or more persons to carry on as co-owners in a business for profit (Corp. Code, § 16101, subd. (9)). As relevant here, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the parties intend to form a partnership. (Corp. Code, § 16202, subd. (a).) The ultimate test of the existence of a partnership is the intention of the parties to carry on a definite business as co-owners, and such intention may be determined from the terms of the parties' agreement or from surrounding circumstances. (*Greene v. Brooks* (1965) 235 Cal.App.2d 161, 166.) A partnership need not be evidenced by writing. (*Calada Materials Co. v. Collins* (1960) 184 Cal.App.2d 250, 253.) Further, it is immaterial if the parties do not designate the relationship as a partnership or realize that they are partners, for the intent may be

implied from their acts. (*Constans v. Ross* (1951) 106 Cal.App.2d 381, 386; *Singleton v. Fuller* (1953) 118 Cal.App.2d 733, 743.)

ANALYSIS AND DISPOSITION

Here, there is no evidence of a written partnership agreement, and the alleged partners contend that they did not act as partners or designate themselves as such. However, their conduct and statements indicate otherwise. First, the indictment indicates that during the transactions with undercover ATF agents, Mr. Grigoryan indicated that he, Mr. Djeredjian, and Mr. Chichyan were partners, and that Mr. Grigoryan described his role in the partnership as that of handling the transportation of the cigarettes. In addition, as part of their guilty pleas, Mr. Chichyan and Mr. Grigoryan admitted that they negotiated and paid for the cigarettes at issue, and Mr. Djeredjian admitted that he personally obtained these same cigarettes from undercover agents, and drove the trucks with the cigarettes from Virginia into California.[4] We find that the combined efforts of Messrs. Chichyan, Djeredjian, and Grigoryan in negotiating, purchasing, and transporting the cigarettes indicate their association and intention to carry on their business venture as partners.

We are not persuaded otherwise by the single invoice offered by petitioner. The fact that one invoice for 500 cases of cigarettes was issued by a vendor to GDC, rather than petitioner, fails to establish that no partnership existed between Messrs. Chichyan, Djeredjian, and Grigoryan. First, we question the authenticity of the invoice based on the allegations in the indictment about dummy invoices, which Messrs. Chichyan, Grigoryan, and Djeredjian admitted by their guilty pleas. As a result, we have no way of verifying whether this invoice produced by petitioner was a dummy invoice or not. In addition, petitioner has not specifically tied the GDC invoice to any of the many transactions detailed in the indictment, or shown that GDC actually paid for or received shipment of the cigarettes allegedly purchased with this invoice. Moreover, petitioner has not shown that this invoice relates to

[4] A felony guilty plea is admissible as a party admission in a subsequent civil action arising out of the same offense; however, the plea is not dispositive in a subsequent civil proceeding because the party may attempt to explain or refute the truth of the admission. (*Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 284). Here, the parties have not persuasively explained or refuted the truth of their admissions, and, in light of all of the other compelling evidence of the parties' knowledge of and participation in handling, transportation, and distribution of the cigarettes at issue, we find the guilty pleas to be strong evidence of the existence of a partnership between the parties.

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any of the purchases of 75,000,000 cigarettes specifically at issue herein. Therefore, we conclude that Messrs. Chichyan, Djeredjian, and Grigoryan acted as partners and formed a partnership.

Having found that a partnership existed, we next determine whether the partnership (petitioner) was a distributor of cigarettes and tobacco products during the period in question. According to the indictment, petitioner purchased large quantities of untaxed cigarettes in Virginia on numerous occasions from October 2000 until February 2002, 75,000,000 of which petitioner loaded onto trucks for transportation to and distribution in California. Petitioner's partners' guilty pleas are additional, strong evidence that petitioner purchased and distributed the untaxed cigarettes at issue in California. There is neither argument nor evidence that petitioner paid tax on the cigarettes purchased and transported into California, either to its vendors or to the Board, and petitioner does not dispute that the cigarettes are no longer in its possession. Accordingly, it is presumed that the cigarettes at issue have been distributed by petitioner. (Rev. & Tax. Code, § 30109.) Therefore, petitioner is liable for tax on the untaxed cigarettes it is presumed to have distributed in California. (Rev. & Tax. Code, § 30123.)

LEGAL ISSUE 2

Whether further adjustments are warranted to the measure of tax.

FINDINGS OF FACT AND RELATED CONTENTIONS

Based on the aforementioned federal indictment, ISOD determined that petitioner purchased 75,000,000 cigarette sticks for transportation to and distribution in California. Consequently, ISOD found that petitioner is liable for excise tax (at $0.0435 per stick) as a cigarette distributor in California and calculated the tax due ($3,262,500) based upon the 75,000,000 cigarettes that it determined petitioner purchased and transported to California where they were distributed (75,000,000 x $0.0435). Subsequently, ISOD reduced the measure of tax by 6,000,000 cigarettes that were seized in Tennessee and never entered California, resulting in a $261,000 reduction of tax (6,000,000 x $0.0435 per stick), to $3,001,500. Moreover, ISOD found that, for an additional transaction, a party other than petitioner was liable for tax of $185,832, and accordingly, ISOD recommends a further reduction of the determined tax from $3,001,500 to $2,815,668, with corresponding adjustments to interest and penalties.

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On appeal, petitioner argues that ISOD has not established that the cigarettes at issue were transported to or distributed in California. Specifically, petitioner argues that ISOD's determination was issued solely based upon the indictment. Petitioner argues that this indictment is only an "accusation," is not evidence that indicates the cigarettes were transported to or distributed in California, and is not a basis upon which ISOD can issue an NOD.

Petitioner also contends that ISOD erroneously included 18,072,000 cigarettes in the total 75,000,000 unstamped cigarettes upon which it assessed the excise tax. In support, petitioner produced a schedule prepared by ISOD dated June 13, 2005, which indicates that for 18,072,000 of the 75,000,000 cigarettes purchased, the destination was identified as Las Vegas and/*or* California.

APPLICABLE LAW

Revenue and Taxation Code section 30201 provides, in relevant part, that if the Board is not satisfied with the report or returns of a taxpayer, it may compute and determine the amount required to be paid upon the basis of any information available to it. Moreover, it is the distributor's responsibility to maintain and make available for examination on request all records necessary to determine the correct tax liability, including receipts, invoices, and other pertinent papers. (Rev. & Tax. Code, §§ 30453, 30454; Cal. Code Regs., tit. 18, § 4026, subds. (a) & (b).) If a taxpayer's records are proven unreliable, it is appropriate for ISOD to compute and estimate that taxpayer's liability by alternative means. (Rev. & Tax. Code, § 30201; *Maganini v. Quinn* (1950) 99 Cal.App.2d 1, 7.) Where the Board establishes a deficiency through an alternative method, the burden is ultimately upon the taxpayer to explain the disparity between the books and records and the results of the Board's audit. (*Riley B's, Inc. v. State Bd. of Equalization* (1976) 61 Cal.App.3d 610, 615-616.)

ANALYSIS AND DISPOSITION

We find no merit to petitioner's contention that ISOD has not established the cigarettes were transported to or distributed in California. As referenced above, petitioner's partners pled guilty to the charges of conspiracy, possession, and transportation, as set forth in the indictment, which establishes that petitioner acquired untaxed cigarettes in Virginia on various occasions and transported them to and distributed them in California. Petitioner's partners have failed to refute the facts admitted by their

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guilty pleas, and therefore we find the guilty pleas to be compelling evidence that petitioner transported the untaxed cigarettes at issue to California and distributed them.

As for petitioner's contention that the remaining measure of cigarettes is overstated, we note that the indictment indicates that the remaining cigarettes at issue were loaded onto trucks for transport to Las Vegas and/*or* California. Therefore, it is possible that some of these cigarettes were transported to Las Vegas, not California. However, petitioner, the party best able to produce evidence as to exactly where these cigarettes were transported, has not presented any evidence to indicate that these cigarettes were transported to Las Vegas, and not California. Moreover, petitioner's contention that it made the cigarette purchases at issue on behalf of GDC (a *California* corporation with business addresses in Glendale and North Hollywood, California), indicates that the cigarettes were most likely intended for California. Consequently, absent evidence to the contrary, we conclude that the cigarettes at issue were transported to California and distributed here.

LEGAL ISSUE 3

Whether the 25-percent penalty for fraud or intent to evade is supported by clear and convincing evidence.

FINDINGS OF FACT AND RELATED CONTENTIONS

ISOD imposed a 25-percent penalty for fraud or intent to evade because it believed petitioner intentionally avoided paying the tax due for the distribution of tobacco products. Specifically, ISOD observed that petitioner's partners were knowledgeable business persons who previously held various valid permits and cigarette distributor's licenses issued by the Board, and were therefore familiar with the requirements to have a permit and pay tax on cigarette distributions.[5] In addition, ISOD notes that

[5] ISOD notes that Mr. Chichyan, in a partnership doing business as Grand Tobacco Company, USA, held a cigarette distributor's license (CR ET 02-001344), with an effective start date of October 1, 1998, and a closeout date of February 28, 2001, as well as a seller's permit (SR AP 97-301672) to make wholesale sales of tobacco, with a start date of December 1, 1998, and a closeout date of December 31, 2000. Also, petitioner has admitted that Mr. Chichyan was an officer for GDC and that Mr. Djeredjian was a manager for GDC, and the Board's records show that GDC held a cigarette distributor's license (CR ET 002-001744) with an effective start date of December 1, 2000. Further, Mr. Djeredjian had extensive prior retail experience as the owner of several tobacco and video stores in Southern California, most notably: (1) in a partnership doing business as Modern Cigs, with a seller's permit (SR ARH 97-219630) to sell cigarettes (start date of April 1, 1998; closeout date of December 31, 1998); (2) in a partnership doing business as Cigarette Depot, with a seller's permit (SR AR 97-524388) to sell cigarettes (start date of April 1, 1999; closeout date of June 30, 1999); (3) through a business operating as Smoke House #2, with a seller's permit (SR Y ARH 97-524389) to sell cigarettes and lighters (start date of April 1, 1999; closeout date of December 31, 2001); and (4) as the president of Smoke House, Inc., with a seller's

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based on the various permits and licenses issued to petitioner's partners, the partners were sent numerous tax information bulletins, regulations, pamphlets, and special mailings from the Board, which explained their tax responsibilities and tax reporting requirements regarding cigarette distributions. Despite its knowledge of its reporting obligations, each of petitioner's partners were active participants in negotiating, setting up, funding, and arranging transportation for the cigarette transactions with undercover ATF agents, resulting in the distribution of approximately 69,000,000 untaxed cigarettes in California. In addition, ISOD asserts that the guilty pleas by petitioner's partners are further evidence of petitioner's fraud or intent to evade the tax.

On appeal, petitioner argues that the fraud penalty is inappropriate because ISOD has not established fraud or intent to evade the law or authorized rules or regulations by clear and convincing evidence. Petitioner contends that the indictment ISOD relies upon is just an allegation, and cannot be used as evidence of petitioner's intent to commit fraud.

APPLICABLE LAW

Revenue and Taxation Code section 30224 provides for the addition of a 25-percent penalty if any part of a deficiency determination is due to fraud or intent to evade the law or authorized rules or regulations. Fraud is intentional wrongdoing on the part of the taxpayer with the specific intent to avoid a tax known to be due. (*Bradford v. Commissioner* (9th Cir. 1986) 796 F.2d 303, 307 (*Bradford*); see Sales and Use Tax Department Audit Manual (Audit Manual) § 0509.10.)[6] Fraud must be established by clear and convincing evidence. (*Cal. State Bd. of Equalization v. Renovizor's Inc.* (9th Cir. 2002) 282 F.3d 1233, 1241; *Marchica v. State Bd. of Equalization* (1951) 107 Cal.App.2d 501, 508; see Cal. Code Regs., tit. 18, § 1703, subd. (c)(3)(C).)[7] Although fraud may not be presumed, it is rare to find direct evidence that fraud has occurred and thus it is often necessary to make the

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permit (SR ARH 97-524379) to sell cigarettes and lighters (start date of January 1, 1999; closeout date of July 26, 2001). In addition, Mr. Grigoryan operated an interstate trucking company with a Board permit both prior to and during the audit period.

[6] Although the Audit Manual was issued for the Sales and Use Tax Department, for purposes of consistent tax administration, the Board applies the same standard in Cigarette and Tobacco Products Tax cases.

[7] Although this is a Sales and Use Tax Regulation, for purposes of consistent tax administration, the Board applies the same standard in Cigarette and Tobacco Products Tax cases.

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determination based on circumstantial evidence. (*Bradford, supra*, 796 F.2d at p. 307; *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 30; see Audit Manual § 0509.25.) Where there is a substantial deficiency that cannot be explained satisfactorily as being due to an honest mistake or to negligence and where the only reasonable explanation is a willful attempt to evade the payment of tax, the penalty for fraud or intent to evade the tax applies. The size of the deficiency in relation to the tax reported should be taken into account, and the indication that a deficiency is due to intent to evade increases in direct proportion to the ratio of the understatement, when it cannot otherwise be satisfactorily explained. Certain facts or actions are by nature evidence of a deliberate attempt to evade the payment of tax, including falsified records and failure to follow the requirements of the law, the knowledge of which is evidenced by permits or licenses held by a taxpayer in prior periods. (*Bradford, supra*, 796 F.2d at p. 307; see Audit Manual §§ 0509.20, 0509.25.)

In addition, a felony guilty plea is admissible as a party admission in a subsequent civil action arising out of the same offense; however, the plea is not dispositive in a subsequent civil proceeding because the party may attempt to explain or refute the truth of the admission. (*Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 284).

ANALYSIS AND DISPOSITION

We have already concluded above that petitioner distributed unstamped cigarettes in California, for which it owes excise tax. Next, we find that petitioner had knowledge of the laws and regulations related to cigarette and tobacco products gained from its partners' prior permitized and licensed business operations in making retail sales and distributions of cigarettes. Despite such knowledge, petitioner did not obtain a cigarette distributor's license or file any returns to report its cigarette distributions during the audit period.

Moreover, in the absence of persuasive evidence to the contrary, the fact that petitioner's partners pled guilty to the aforementioned charges in the indictment demonstrates that petitioner's partners knew it was against the law to distribute unstamped cigarettes. In addition, in their guilty pleas petitioner's partners admitted that they discussed, with ATF agents, the creation of dummy invoices to hide their illegal activity and setting up payment methods to keep the cigarette transactions

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"off the books." By these admissions, petitioner's partners clearly established that they knew it was against the law to purchase and distribute cigarettes without the payment of tax.

Therefore, the evidence in this case clearly and convincingly establishes that petitioner knowingly engaged in the unlawful distribution of cigarettes over several years without registration or the payment of the cigarette and tobacco products tax. Accordingly, we find that the imposition of the fraud penalty is appropriate.

LEGAL ISSUE 4

Whether the failure-to-file penalty should be relieved.

FINDINGS OF FACT AND RELATED CONTENTIONS

A 10-percent failure-to-file penalty was assessed against petitioner pursuant to Revenue and Taxation Code section 30221 because it did not file a return for any of the quarters in the audit period to report its distributions of cigarettes in California. On appeal, petitioner asserts that the penalty should be relieved because no partnership ever existed.

APPLICABLE LAW

Revenue and Taxation Code section 30282, subdivision (a) provides that the failure-to-file penalty may be relieved if the Board finds that the failure to file returns was due to reasonable cause and circumstances beyond taxpayer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. To seek relief of this penalty, taxpayer must submit a statement under penalty of perjury setting forth the facts on which it bases its claim for relief. (Rev. & Tax. Code, § 30282, subd. (b).)

ANALYSIS AND DISPOSITION

Here, petitioner has submitted a declaration signed under penalty of perjury requesting relief of the foregoing penalty. In its request, petitioner reargues that the penalty should not be applied because no partnership ever existed. As discussed earlier, the evidence shows that a partnership did exist and that the partnership made distributions of untaxed cigarettes in California during the audit period. Therefore, the partnership should have filed returns to report those distributions, but did not. We find nothing in the present record that indicates petitioner's failure to file returns was due to reasonable cause and circumstances beyond its control. In fact, petitioner's request for relief provides no

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explanation for its failure to file except its contention that no partnership existed. Consequently, we recommend no relief of the failure-to-file penalty

ORDER

It is hereby ordered that the determined tax, fraud penalty, and failure-to-file penalty be reduced from $3,262,500.00 to $2,815,668.00, from $815,625.00 to $703,917.00, and from $326,250.00 to $281,566.80, respectively, and that the matter be redetermined without further adjustment.

Adopted at Sacramento, California, on September __, 2014.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member*

*For John Chiang, pursuant to Government Code section 7.9.

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