STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS TAX APPEAL

# CALIFORNIA STATE BOARD OF EQUALIZATION

## APPEALS DIVISION PETITION FOR REHEARING SUMMARY

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| In the Matters of the Petition for Redetermination and Administrative Hearing under the Cigarette and Tobacco Products Tax Law of: | Account Number CP STF 50-004594<br>Case ID 569235 |
| MOX, INC., dba Max Wholesale | Account Number CP STF 50-003493<br>Case ID 570251 |
| Petitioner/Taxpayer[1] | Fullerton, Orange County |

Type of Business: Tobacco products distributor

Liability periods: 01/01/06 – 02/28/06 (Case ID 569235)
05/01/04 – 12/31/05 (Case ID 570251)

| Item | Disputed Amount |
|---|---|
| Unreported distributions of tobacco products | $ 818,203 (Case ID 569235)<br>$5,109,188 (Case ID 570251) |
| Fraud penalties | $ 95,648 (Case ID 569235)<br>$ 597,264 (Case ID 570251) |

| | 569235 | | 570251 | |
|---|---|---|---|---|
| | Tax | Penalty | Tax | Penalty |
| As determined | $382,591.73 | $229,555.03 | $2,389,056.31 | $608,516.60 |
| Finality penalty | | 38,259.17 | | |
| Post-D&R adjustment | | - 38,259.17 | | - 11,252.51 |
| Revised post-D&R adjustment | | -133,907.10 | | |
| Proposed redetermination, protested | | | $2,389,056.31 | $597,264.09 |
| Determination, after adjustments | $382,591.73 | $95,647.93 | | |
| Proposed tax redetermination | | | $2,389,056.31 | |
| Determined tax | $382,591.73 | | | |
| Interest through 11/25/14 | 264,164.37 | | 1,859,994.77 | |
| Fraud penalty | 95,647.93 | | 597,264.09 | |
| Total tax, interest, and penalty | $742,404.03 | | $4,846,315.17 | |
| Monthly interest beginning 11/26/14 | $ 1,912.96 | | $ 11,945.28 | |

The Board heard these matters on September 23, 2014, and it ordered no adjustment to the determined tax. The Board also found that the understatements were the result of fraud, although it

[1] For ease of reference, we will use the term "taxpayer."

ordered that the remaining penalties be deleted since it found that those penalties had been imposed in error.[2] Petitioner filed a timely petition for rehearing.

**UNRESOLVED ISSUE**

**Issue 1:** Whether the petition for rehearing should be granted. We recommend that it be denied.

The primary issues in this case are whether taxpayer made taxable distributions of tobacco products that it did not report, whether adjustments are warranted to the determined tax, and whether the understatements were the result of fraud. Further, if the finding of fraud were not upheld, neither of the Notices of Determination would have been timely.

In the petition for redetermination, taxpayer argues that the Property and Special Taxes Department (Department) has not established fraud by clear and convincing evidence. Taxpayer asserts that the elimination of the penalties for failure to file returns and for failure to secure a license also necessitates a finding that there was no fraud. We note that taxpayer also raised this specific argument at the Board hearing. In addition, taxpayer states that, during the Board's deliberations regarding the case, there was no discussion of any badges of fraud. The fact that there was no discussion among the Members regarding the question of fraud does not indicate that their decisions were based on insufficient evidence. To the contrary, both the taxpayer and the Department made detailed, extensive presentations of their respective positions regarding fraud, and the Board Members incorporated the information in those presentations in their decision regarding these matters.

In addition, taxpayer asserts that there was an irregularity in the Board's vote, which was "to adopt the staff recommendation and refer the matter to the Offer in Compromise Program or direct staff to work." Taxpayer asserts that there was a problem with the vote because the Offer in Compromise Program "refused to consider a reasonable approach." We find that the inability for taxpayer to reach a resolution with the Offer in Compromise Program is not evidence of an irregularity in the vote.

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[2] The deleted penalties were failure-to-file penalties (on both Notices of Determination) and, for Case ID 569235, the penalty for failure to secure a license and the finality penalty. Relief of the finality penalty was conditioned on taxpayer's payment of the entire amount of determined tax within 30 days of the Notice of Final Action in that matter.



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Taxpayer has provided no new arguments or evidence with its petition for rehearing. We conclude that the Board correctly decided this matter, and taxpayer has not presented a basis for rehearing. We thus recommend that the petition for rehearing be denied.

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

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