

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Claim for Refund)
Under the Sales and Use Tax Law of:)
VASKIN KOSHKERIAN, dba) Account Number SR Y EA 97-009681
Koshkerian Family, CA L.P.) Case ID 607521
Claimant) Orange, Orange County

Type of Business: Gas stations
Claim period: 01/01/00 – 03/07/01

<u>Item</u>	<u>Claimed Refund</u>
Partnership liability	\$103,127

Claimant filed a claim for refund for \$103,127.30 paid by claimant against the liability for the partnership, Koshkerian Family, CA L.P.

UNRESOLVED ISSUES

Issue 1: Whether claimant is personally liable as a general partner for the partnership’s tax liability for the period January 1, 2000, through March 7, 2001. We find claimant is personally liable.

In August 1996, claimant entered into a Limited Partnership with Liana R. Koshkerian and the Koshkerian Family Trust, with claimant as general partner, pursuant to a written Agreement of Limited Partnership. The Board issued a seller’s permit to the partnership, with an effective start date of January 1, 1997, to operate gas stations. On July 21, 2000, the partnership filed for Chapter 11 bankruptcy protection. The partnership was appointed by the bankruptcy court to act as debtor-in-possession and allowed to continue operating the gas stations. The partnership’s secured creditor, Bankers Trust Company, subsequently discovered that both the partnership and claimant were embezzling money from the cash registers. As a result, the partnership and Bankers Trust Company entered into any agreement that allowed the partnership to remain as a debtor-in-possession but required it to deposit income generated by the gas stations into a series of blocked accounts. Also, an independent third party, Trigild Corporation, was appointed to oversee the operation of the gas stations beginning on or about January 11, 2001. On March 7, 2001, the partnership’s Chapter 11

1 (reorganization) bankruptcy was converted to a Chapter 7 (liquidation) bankruptcy. When the
2 partnership ceased operating the gas stations as a debtor-in-possession on March 7, 2001, Energy One
3 99 LLC (Energy One) took over the operation. On October 1, 2001, claimant filed a voluntary
4 Chapter 7 personal bankruptcy petition.

5 The partnership had unpaid tax liabilities related to two notices of determination (NOD's), for
6 the first quarter 2000 (1Q00) and for 1Q01, and for a return filed with no remittance for 4Q00. On
7 September 22, 2009, the Sales and Use Tax Department (Department) received a \$56,617.93
8 distribution from claimant's personal bankruptcy. On March 9, 2012, the Department collected
9 \$46,509.37 through enforcement of a lien against claimant's residence. Claimant filed a claim for
10 refund for those payments on March 13, 2012. The claim for refund was timely filed with respect to
11 the payment of \$46,509.37, but was not timely with respect to the payment of \$56,617.93. Claimant
12 concedes that he was a general partner in the partnership and that, as a general partner, he is jointly and
13 severally liable for the partnership's unpaid tax liabilities. However, claimant argues that the
14 partnership's secured creditor, Bankers Trust Company, took complete control over, and essentially
15 became the new owner of, the gas stations on or about December 20, 2000. Thus, claimant contends
16 that neither the partnership nor claimant as a general partner is liable for any of the tax liabilities that
17 became due after December 20, 2000. Further, claimant contends it was unfair for the Board to collect
18 any amounts from him personally (even taxes that became due prior to December 20, 2000) because
19 the partnership always had more than sufficient funds to pay its own taxes even after it filed for
20 Chapter 11 bankruptcy. On that basis, claimant asserts that the Department's collection efforts should
21 have been directed solely against the partnership and not against claimant individually.

22 There is no dispute that the partnership held the seller's permit for the gas stations where the
23 taxable retail sales at issue were made throughout the liability period. Consequently, the partnership
24 was responsible for reporting and remitting the tax due on its retail sales. There is no provision in the
25 December 20, 2000 stipulation between the partnership and Bankers Trust Company stating that
26 Bankers Trust Company was to become the new owner of the business. Further, there is no evidence
27 of a transfer of title to the business from the partnership to any other entity prior to June 28, 2001,
28 when Energy One acquired the gas stations. Rather, the stated purpose of the stipulation was to allow

1 the partnership to continue operating the gas stations as a debtor-in-possession using cash collateral
2 while protecting income generated by the business from any further fraudulent misappropriation by the
3 partnership or by claimant. Accordingly, we reject claimant's unsupported assertion that Bankers
4 Trust Company took over the business in December 2000, as well as his argument that anyone else
5 besides the partnership was responsible for paying the partnership's tax liabilities after December 20,
6 2000. Therefore, we find the partnership, and claimant as a general partner, is liable for all of the
7 unpaid tax liabilities at issue. Moreover, we reject claimant's assertion that the Department should
8 have exclusively pursued the partnership to satisfy the liability. Partners are jointly and severally
9 liable for partnership debts. (Corp. Code, §§ 15904.04, subd. (a), 16305, subd. (b), 16306, subd. (a).)
10 Also, in this case there is no requirement that the Department first attempt to collect from the
11 partnership prior to collecting from claimant, because the partnership did not furnish a written
12 partnership agreement at the time it applied for a seller's permit. (Rev. & Tax. Code, § 6831;
13 Compliance Policy and Procedures Manual § 724.023.)

14 **Issue 2:** Whether adjustments are warranted to the partnership's tax liability. We find no
15 adjustments are warranted.

16 The partnership's tax liability at issue results from an NOD issued on August 28, 2001, for
17 credits for sales tax prepaid to fuel suppliers claimed on the 1Q00 return in excess of the amounts of
18 prepayments actually made; a return filed with no remittance for 4Q00; and an NOD issued October 2,
19 2001 for the period January 1, 2001, through March 7, 2001 (partial 1Q01), for which the partnership
20 did not file a return. To estimate the taxable sales for the return for the partial 1Q01, the Department
21 used average daily sales computed using the figures from the partnership's returns filed for 3Q99
22 through 4Q00.

23 Claimant contends that the 4Q00 return was fraudulently filed by someone not authorized by
24 the partnership and that the amount of gallons sold, as reported on that return, is overstated by 107,000
25 gallons. Regarding 1Q01, claimant contends that the amount of gallons used to compute the amount
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1 due includes 168,000 gallons of jet fuel that ExxonMobil erroneously reported it had sold to the
2 partnership.¹

3 We reject claimant's contention that a third party fraudulently filed the return for 4Q00 because
4 the return was submitted by facsimile transmission, and there is clear evidence that the facsimile was
5 sent by the partnership's longtime accountant. Accordingly, we find the 4Q00 liability was self-
6 assessed by the partnership. With respect to claimant's contention that the return overstated the
7 partnership's liability, there is no dispute that the 4Q00 return reports 106,395 more gallons of fuel
8 purchased in 4Q00 than were reported by fuel suppliers ExxonMobil and Chevron. However, this
9 discrepancy does not offer a basis to recommend adjustments because the partnership filed the 4Q00
10 return, and claimant has not provided evidence that the figures it reported are incorrect. Further, there
11 is no certainty that the fuel sales to the partnership reported by its suppliers are more accurate than the
12 amounts reported by the partnership. In that regard, we note that there were similar discrepancies on
13 returns filed for earlier quarters. Thus, we find it is possible that the partnership purchased fuel from
14 vendors other than ExxonMobil and Chevron. In any event, claimant has not provided any records to
15 establish that the partnership overstated the amount of fuel sales reported on the 4Q00 return.

16 With respect to claimant's assertion that the Department's estimate for 1Q01 is excessive, we
17 find that the Department used the best information available to make the estimate. Further, we find
18 that it was reasonable for the Department to compute an average amount of daily sales using reported
19 taxable sales for the preceding six quarters. Regarding claimant's argument that ExxonMobil did not
20 sell 168,000 gallons of jet fuel to the partnership in 1Q01, we note that the estimated amount of sales
21 for 1Q01 was based on the partnership's prior returns, with a \$5,040 credit for prepaid sales tax as

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23 ¹ Also, claimant alleges that the Department made up sales figures and created fake documents as part of its estimation of
24 sales for 1Q01. Claimant asserts that Board employees conspired against claimant to overstate the partnership's liability in
25 order to punish claimant for his alleged participation as a witness in a federal case involving an individual who claimant
26 contends has close ties to a former Board employee. Claimant has provided no evidence to support these allegations, and
27 we will not discuss them further herein. In addition, claimant asserts that the Board may have mistakenly received a double
28 payment of \$91,835 for 2Q01, after the transfer of the business to Energy One. However, he has provided no evidence of
such double payment, and the Department has researched this matter and confirmed that there was none. Claimant also
alleges that the Board obtained a payment from enforcement of a lien against his personal residence in violation of section
704.950 of the Code of Civil Procedure, which discusses the effect of certain judgment liens on a declared homestead.
However, that section explicitly states that it only protects against enforcement of a judgment lien created pursuant to
Article 2 of the California Code of Civil Procedure. Thus, the provisions of the section do not impact the validity of a state
tax lien created pursuant to Revenue and Taxation Code, section 6756.

1 reported by Exxon Mobil. The Department did not base its determination for 1Q01 on information
2 provided by the partnership's fuel suppliers. Thus, we find no adjustments are warranted based on
3 claimant's assertion that jet fuel sales to the partnership were erroneously reported by ExxonMobil. In
4 fact, if that allegation were true, the \$5,040 credit for prepaid sales tax to ExxonMobil would be
5 eliminated from the computation, which would increase the liability for 1Q01. Consequently, absent
6 evidence to establish sales figures that are more accurate, we find no adjustment is warranted to the
7 amount established for 1Q01.

8 **OTHER MATTERS**

9 Claimant has written numerous emails to the author of the D&R and to other Board staff. We
10 regarded three of those emails, in concert with one another, as a request for reconsideration, which we
11 acknowledged in a letter dated September 16, 2013. We explained in that letter that a supplemental
12 D&R would be issued. In an email dated October 18, 2013, claimant stated that he believed a
13 supplemental D&R would be a waste of time, and he asked us to instead have the matter scheduled for
14 hearing as soon as possible.

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