STATE BOARD OF EQUALIZATION
CIGARETTE AND TOBACCO PRODUCTS TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination Under the Cigarette and Tobacco Products Tax Law of:	
HASSAN ANTONIOS MAHFOOD, dba Coalinga Fastrip	Account Number: CP ET 50-003814 Case ID 351999
Petitioner	Coalinga, Fresno County

Type of Business: Convenience store

Audit period: 04/01/99 – 02/28/03

Item	Disputed Amount
Unreported distributions of tobacco products	$69,546

	Tax	Penalty
As determined:	$39,492.46	$3,949.24
Adjustment - Appeals Division		-3,949.24
Proposed redetermination, protested	$39,492.46	$ 0.00

Proposed tax redetermination	$ 39,492.46
Interest through 6/25/11	36,338.99
Total tax, interest, and penalty	$ 75,831.45
Monthly interest beginning 6/26/11	$ 230.37

UNRESOLVED ISSUES

Issue: Whether petitioner distributed untaxed tobacco products from an unlicensed out-of-state vendor and is therefore liable for excise tax on those distributions. We find petitioner is liable for excise tax.

Petitioner has operated a convenience store since July 1997. He did not hold a license to distribute tobacco products and did not report excise tax with respect to the distribution of any tobacco products for the audit period in question. Petitioner holds a seller's permit (SR KHO 97-0200648) for sales and use taxes, under the same business name for the same location.

The Excise Taxes Division of the Property and Special Taxes Department (Department) obtained information from the United Parcel Service (UPS) indicating that petitioner had received 24 shipments from House of Oxford, an out-of-state vendor of untaxed tobacco products, from January

21, 2002, through September 5, 2003. Using actual purchase amounts from an accounts receivable history report petitioner obtained from House of Oxford, the Department determined petitioner had made 179 purchases of untaxed tobacco products from House of Oxford, with total payments (made upon delivery) of $69,546.79. Since petitioner did not report distribution of these tobacco products but no longer had these products in his possession, the Department concluded that petitioner was liable for excise tax of $39,492.46 on these unreported distributions.

Petitioner contends he did not make any of the purchases at issue and did not receive or distribute any of the untaxed tobacco products identified in the accounts receivable history report. Petitioner asserts that House of Oxford will ship to anyone at any address as long as the purchaser is paying cash, and that anyone with access to his store could have placed the orders. Petitioner contends that if he were trying to hide these purchases, he would not have cooperated with the Department by obtaining the accounts receivable history report. Petitioner states he has been purchasing from local vendors since 2003, two years before he was contacted in regards to this audit, and if he were purchasing from House of Oxford as the Department contends, he would still have been purchasing from them at the time of first contact, which he was not. Further, there would be evidence that he purchased from House of Oxford for his other two stores (not at issue here) during the audit period, which there is not.

The House of Oxford accounts receivable history report and UPS information indicate that the tobacco products at issue here were billed and shipped under petitioner's name to petitioner's address in Coalinga. The UPS information indicates that four different employees of petitioner signed for receipt of the product, with payment on delivery. We believe it is highly unlikely that petitioner's employees would have accepted shipments, and made payments to House of Oxford for these purchases, unless petitioner was in fact making the purchases. Further, the purchases occurred every week during the audit period, which again renders it unlikely that petitioner was unaware of the shipments. Therefore, we conclude that petitioner was making these purchases.

In the absence of evidence to the contrary, we presume petitioner acquired untaxed tobacco products from House of Oxford. (See Rev. & Tax. Code, § 30109.) Also, since there is no evidence that the tobacco products petitioner purchased from House of Oxford are still in petitioner's

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possession, petitioner is presumed to have distributed those tobacco products in California. (See Rev. & Tax. Code, § 30109.) We therefore find that petitioner distributed untaxed tobacco products in California, and is thus liable for excise taxes due on the $69,546 wholesale cost of the unreported distributions.

RESOLVED ISSUE

Since petitioner did not file returns to report the cigarette and tobacco products tax, a failure-to-file penalty was automatically added to the determination. Petitioner has filed a request for relief from penalty, and, at the appeals conference, the Department recommended that the penalty in the amount of $3,949.24 be relieved.

OTHER DEVELOPMENTS

None.

Summary prepared by Thea Etheridge, Business Taxes Specialist II

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