

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 VALERIE DAWN FREEDMAN, dba) Account Number: SR EA 100-578691
 6 Coffee, Tea & Tulips) Case ID 342567
 7 Petitioner) Laguna Niguel, Orange County

8 Type of Business: Sales of coffee, tea, soda, and sandwiches

9 Audit period: 09/01/04 – 05/31/05

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<u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales	\$65,755
12 Failure-to-file penalty	\$ 509
13 Relief of interest	Unstated

	<u>Tax</u>	<u>Penalty</u>
14 As determined:	\$7,457.00	\$745.70
15 Adjustment - Sales and Use Tax Department	-482.00	-48.20
16 Appeals Division	<u>-1,885.00</u>	<u>-188.50</u>
17 Proposed redetermination, protested	<u>\$5,090.00</u>	<u>\$509.00</u>
18 Proposed tax redetermination	\$5,090.00	
19 Interest through 5/31/10	2,419.12	
20 10% penalty for failure to file returns	<u>509.00</u>	
21 Total tax, interest, and penalty	<u>\$8,018.12</u>	
22 Monthly interest beginning 6/1/10	<u>\$ 29.69</u>	

23 This matter was scheduled for Board hearing on February 25, 2010, but petitioner did not
 24 respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioner
 25 that this matter would be presented to the Board for decision without oral hearing. Subsequently, the
 26 matter was deferred at the request of Board Member Steele for the Sales and Use Tax Department
 27 (Department) to conduct further review of petitioner’s sales activities. By memorandum dated
 28 March 15, 2010, the Department stated that it is unlikely that petitioner’s business met the conditions
 of the 80-80 rule as explained in California Code of Regulations, title 18, section (Regulation) 1603.
 Consequently, the Department recommended a reduction of 27.0075 percent to allow for nontaxable
 sales to go of coffee, tea, and cold food products as reflected the table above.

UNRESOLVED ISSUES

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2 **Issue 1:** Whether petitioner owned and operated the business. We conclude that at all relevant
3 times, petitioner owned and operated the business and is liable for the amount determined.

4 A business known as Tea and Tulips was operated without a seller's permit in Mission Viejo,
5 California, from September 1, 2004, through May 16, 2005. On May 14, 2005, Tea and Tulips was
6 temporarily closed, and the business re-opened on May 17, 2005, as Coffee, Tea, and Tulips.
7 Petitioner applied for a seller's permit on May 16, 2005, for the business Coffee, Tea, and Tulips,
8 which she sold in July 2005. The Department concluded that petitioner had been the owner of the
9 business, Tea and Tulips, for which no sales and use tax returns had been filed. To establish the
10 audited amounts of taxable sales, the Department used Profit and Loss Statements for the period
11 September 1, 2004, through May 31, 2005, which were provided by petitioner to the purchaser of the
12 business in July 2005. The Department subsequently reduced the audited taxable sales by the amount
13 recorded on the Profit and Loss Statements for the period May 17, 2005, through May 31, 2005, since
14 petitioner had filed a sales and use tax return for the business Coffee, Tea, and Tulips for the period
15 May 17, 2005, through July 29, 2005. Also, as noted above, further adjustments have been made for
16 nontaxable sales to go of coffee, tea, and cold food products.

17 Petitioner contends that she was not the owner of Tea and Tulips but was merely the manager
18 of the day-to-day operations and the person responsible for marketing. Petitioner asserts that she
19 opened Coffee, Tea, and Tulips, as an entirely separate business, after the true owners of Tea and
20 Tulips abandoned that business. As support, petitioner has provided letters and various documents,
21 which are detailed in the D&R. Most of the documents are declarations from various individuals who
22 interacted with the business Tea and Tulips.

23 Petitioner and her former spouse, Michael Freedman, entered into a sublease agreement dated
24 June 8, 2004, for the property where the business Tea and Tulips was located. Both petitioner and
25 Mr. Freedman signed the sublease agreement, and according to the primary lessee, participated in
26 negotiation of the terms. Also, in December 2004, petitioner signed a contract for direct mail
27 advertising, which she signed as "owner" of Tea and Tulips. The amount due for that advertising was
28 not paid in full, and petitioner listed the debt as a joint debt for her and Mr. Freedman during their

1 bankruptcy proceeding in April 2005. In addition, in February 2005, an e-newsletter featured
2 petitioner as Entrepreneur of the Month. The author of that e-newsletter stated that petitioner held
3 herself out to be the owner of Tea and Tulips, and described petitioner's discussion about owning and
4 running the business. Three of the declarations provided by petitioner, which are signed under penalty
5 of perjury, state that the individuals making the declarations believed petitioner was the owner of Tea
6 and Tulips. Petitioner wrote a letter on April 17, 2005, to the primary lessee of the business location
7 regarding her desire to sell the business. Also, petitioner's father wrote a letter to the primary lessee's
8 attorney on August 22, 2005, in which he stated that petitioner had been contemplating the sale of the
9 business at least three months before the actual sale. Since the business sold July 29, 2005, that letter
10 indicates petitioner was contemplating the sale of the business near the end of April 2005. Both that
11 date and the date of petitioner's April 17, 2005 letter precede the date of May 17, 2005, when
12 petitioner states she became the owner of the business.

13 Based on the foregoing evidence, we conclude petitioner owned Tea and Tulips, which she
14 operated without a seller's permit for the period September 1, 2004, through May 16, 2005. In
15 addition, we find that although there may be other partners, such as petitioner's former husband
16 Mr. Freedman, collection for the entire liability may be from the assets of one individual partner.¹

17 **Issue 2:** Whether relief is warranted from the penalty for failure to file returns. We find no
18 basis for relief.

19 The ten-percent failure-to-file penalty was imposed on petitioner because she did not file any
20 sales and use tax returns for the periods at issue. Petitioner requests relief from the penalty on the
21 grounds that she was not the owner of Tea and Tulips. In addition, petitioner contends that the penalty
22 should be reduced or waived due to unreasonable delay by the Board in scheduling the appeals
23 conference.

26 ¹ As noted, Tea and Tulips was operated without a seller's permit, and petitioner applied for a seller's permit as an
27 individual for the business Coffee, Tea, and Tulips. Thus, there is no seller's permit application which lists petitioner's
28 former husband. Petitioner and Mr. Freedman obtained a judgment of dissolution of marriage on August 29, 2006. At the
time the D&R was written, Mr. Freedman was incarcerated in federal prison for his involvement in a Ponzi scheme.

1 We first note that petitioner's contention regarding unreasonable delay by the Board is not
2 relevant to the issue of the penalty, but will be addressed below in the issue regarding relief of interest.
3 With respect to the primary basis for petitioner's request for relief from the penalty, we conclude that
4 petitioner was the owner of Tea and Tulips and thus should have filed sales and use tax returns.
5 Petitioner has not provided evidence that her failure to file returns was due to reasonable cause and
6 circumstances beyond her control. Accordingly, we find no basis to recommend relief from the
7 failure-to-file penalty.

8 **Issue 3:** Whether relief from interest is warranted. We conclude that it is not.

9 Petitioner requests relief of interest on the grounds that she did not own Tea and Tulips, and
10 there was an unreasonable delay by the Board in scheduling the appeals conference. The first
11 contention is relevant to whether petitioner is liable at all, which we find she was. As such, we find
12 that the assertion is not relevant to this issue (or, more specifically, we simply reject the contention as
13 incorrect). With respect to the delay in scheduling an appeals conference, we note that petitioner
14 requested three postponements of the conference. The Case Management Section accommodated each
15 of those requests, including one rescheduled conference at the Board's Houston Area office, after
16 petitioner accepted a job in Austin, Texas. In addition, petitioner did not attend a conference held on
17 June 20, 2007, and the conference was subsequently re-scheduled, even though in such circumstances
18 another conference is not usually scheduled, the taxpayer instead being offered the opportunity to
19 submit any additional information or arguments in writing. We find that the primary reasons for delay
20 in holding the appeals conference related to petitioner's issues, and Case Management used its best
21 efforts to accommodate petitioner's scheduling needs. We conclude that there is no evidence that there
22 was any unreasonable delay caused by a Board employee, and we thus find there is no basis upon
23 which to recommend relief of interest.

24 **OTHER DEVELOPMENTS**

25 None.

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27 Summary prepared by Rey Obligacion, Retired Annuitant
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