

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION PETITION FOR REHEARING SUMMARY

In the Matter of the Petitions for)
 Redetermination Under the Cigarette and)
 Tobacco Products Tax Law of:)
 PARTNERSHIP OF LOH SUN) Account Number: CR ET 02-002372
 INTERNATIONAL, INC., KENT LA,) Case ID's 480987, 480989, 506428
 NANCY LA, AND JOHN LA)
 Petitioner) San Gabriel, Los Angeles County

Type of Business: Distribution of cigarettes

Liability periods: 01/01/01 – 06/30/03 (480987)
 07/01/03 – 07/31/03 (480989 and 506428)

<u>Item</u>	<u>Disputed Amount</u>		
Unreported distributions of cigarettes	47,115,800 sticks (480987)		
	1,382,000 sticks (480989)		
	3,060,000 sticks (506428)		
Fraud penalties	\$512,385 (480987)		
	\$ 15,029 (480989)		
	\$ 33,278 (506428)		
	<u>480987</u>	<u>480989</u>	<u>506428</u>
Tax as determined and protested	\$2,049,540.00	\$ 60,117.00	\$133,110.00
Interest through 11/25/12	1,729,516.13	45,889.22	86,139.97
Fraud penalty	<u>512,385.00</u>	<u>15,029.25</u>	<u>33,277.50</u>
Total tax, interest, and penalty	\$4,291,144.13	\$121,035.47	\$252,527.47
Payments	<u>- 134,345.62</u>	<u>00.00</u>	<u>- 73,654.38</u>
Balance Due	<u>\$4,157,095.51</u>	<u>\$121,035.47</u>	<u>\$178,873.09</u>
Monthly interest beginning 11/26/12	<u>\$ 9,575.97</u>	<u>\$ 300.59</u>	<u>\$ 297.28</u>

The Board heard this matter on April 26, 2012. The hearing focused on John La's arguments that he was not a partner in the business, that he was not involved in the partnership's unreported distribution of cigarettes and counterfeit cigarettes, and that funds transferred in and out of his bank account were not related to the purchase or sale of cigarettes by the partnership. The Board found that Mr. La was a partner, and that the partnership is liable for the tax and penalties included in each of the three Notices of Determinations at issue. Petitioner filed a timely petition for rehearing, which was scheduled for consideration by the Board on the consent calendar at its September 2012 meeting. The

1 matter was pulled from that calendar at the request of Member Steel, and scheduled for consideration
2 on the adjudicatory calendar.

3 UNRESOLVED ISSUE

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

6 In the petition for rehearing, John La stated that he had obtained newly discovered relevant
7 evidence to support his argument that he was not a partner in the business. Mr. La submitted evidence
8 that a payment of \$180,000 to a Hong Kong tobacco company, previously regarded as a payment for
9 the purchase of cigarettes, was in fact related to stock investments. Mr. La also provided
10 approximately 200 pages of handwritten cigarette sales invoices issued by the partnership, which he
11 described as all of the invoices obtained by the Board in its investigation of the partnership. Since the
12 invoices he submitted do not contain instructions for purchasers to deposit funds directly into his bank
13 account, Mr. La argues that they controvert the Board's finding that he was a partner who received
14 proceeds from unreported distributions of cigarettes and channeled those funds to other bank accounts.

15 However, the Board's records from its investigation of the partnership include sales invoices
16 that were not included in Mr. La's submission, and when we explained to Mr. La that some of those
17 invoices did contain instructions to deposit funds directly into his bank account, he responded that
18 there were fewer than 10 invoices that contained such instructions. On that basis, Mr. La changed his
19 request from being relieved of all liability to having his liability limited to the portion of the
20 partnership's tax liability related to the invoices that contained instructions to deposit the funds directly
21 in his account. In other words, Mr. La effectively conceded his participation in the partnership to the
22 extent of the invoices that show such involvement. Since all partners are jointly and severally liable
23 for all the debts and obligations incurred by the partnership (Corp. Code, § 16306, subd. (a)), Mr. La is
24 liable, along with the other partners, for the entire liability. Thus, we find Mr. La has not provided
25 evidence to support a reduction to or the elimination of his liability.

26 We conclude that the Board reached the correct decision in this matter, and that Mr. La has not
27 provided a basis for a rehearing. Accordingly, we recommend that the petition for rehearing be denied.

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