

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination)
 Under the Sales and Use Tax Law of:)
)
 BHUPINDER SINGH MAC) Account Number: SR Y AC 97-809979
) Case ID 299487
)
)
 Petitioner) Woodland Hills, Los Angeles County
)

Type of Business: Gas station chain with mini marts

Audit Period: 10/1/01 – 9/30/04

<u>Item</u>	<u>Disputed Amount</u>
Unreported cigarette rebates	\$396,407
	<u>Tax</u>
As determined and protested	<u>\$32,219.09</u>
Proposed tax redetermination	\$32,219.09
Interest through 11/30/10	<u>21,747.78</u>
Total tax and interest	<u>\$53,966.87</u>
Monthly interest beginning 12/1/10	<u>\$187.94</u>

This matter was heard by the Board on April 29, 2009, but a decision could not be reached. It was then scheduled for Board decision on October 6, 2009, but was deferred at the request of Board Member Horton’s office.

UNRESOLVED ISSUES

Issue 1: Whether payments received by petitioner from cigarette manufacturers were rebate payments that were additional taxable gross receipts. We conclude that the subject amounts received by petitioner from third-party manufacturers were rebates that constitute taxable gross receipts.

Petitioner, a sole proprietorship, has operated a gas station chain since January 1, 2001. The predecessor’s business was operated by Bhupinder Mac and Harjinder Mac (SR X AC 13-833630), under the business name “Mac Chevron”. Petitioner was a partner in the predecessor’s business which was closed out on December 31, 2000. The Sales and Use Tax Department (Department) found that petitioner received \$396,407 in cigarette rebates from cigarette manufacturers, and that petitioner was

1 required to reduce the selling price of cigarettes to his customers by the amount of the applicable
2 rebates. The Department concluded that the rebates were additional taxable gross receipts.

3 Petitioner contends that the disputed amounts are not taxable because: 1) they were not found
4 to be taxable in the prior audits of the predecessor; 2) petitioner could not collect sales tax
5 reimbursement from his customers on the amount of the rebates because the manufacturers mandated a
6 preset selling price and the cigarette displays were clearly marked with that selling price; and 3) a
7 portion of the amount received from cigarette manufacturers was for display rental and not subject to
8 tax on that basis. In support of his contentions, petitioner submitted two letters to show that the
9 Department accepted the tax returns filed by the predecessor, and also submitted a series of agreements
10 with Philip Morris USA Inc. to show that a portion of the rebates was for nontaxable display rental.
11 The Department states that petitioner was advised in the audit of the predecessor that cigarette rebates
12 income is taxable, and that petitioner has not established that the Philip Morris agreements allocated a
13 portion of the amount petitioner received from Philip Morris to cigarette display rental.

14 Regarding petitioner's contention that he was unable to reimburse himself for the sales tax due
15 on the rebates, we note that petitioner's ability to collect sales tax reimbursement on the amount of the
16 rebates does not impact the taxability of those rebates. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18,
17 § 1700, subd. (a).) Specific payments (known as "rebates") from a third party such as the
18 manufacturer in exchange for making retail sales of cigarettes for a reduced price (i.e., for a reduction
19 at least equal to the rebate amount) are subject to tax. Although we noted in the D&R that we would
20 review any additional information petitioner submitted to show that a portion of the disputed payments
21 were related to display rentals, he did not submit any such additional documentation, and we find no
22 support for his contention from our review of the agreements petitioner provided us. Accordingly, we
23 find petitioner has not overcome the presumption that all gross receipts are subject to tax and conclude
24 we have no basis upon which to recommend any adjustment.

25 **Issue 2:** Whether petitioner received and relied on misinformation qualifying for relief under
26 Revenue and Taxation Code Section 6596. We conclude that no relief is warranted.

27 Petitioner contends that since the rebates were not identified as taxable in the prior audits of the
28 predecessor, he should be relieved of the tax liabilities. The Department states that petitioner was

1 advised in the audit of the predecessor that cigarette rebates are taxable. The Department provided a
2 copy of the 1997 audit report of the predecessor for the period January 1, 1995 through September 30,
3 1996, and noted that cigarette rebates were disclosed and considered taxable in the audit.

4 The letters provided by petitioner merely state that the predecessor's tax returns were accepted
5 for the audit at issue. We reviewed the audit report for the most recent prior audit of the predecessor
6 and find that the Department did identify the rebate payments as subject to tax. Accordingly, we find
7 no basis for relief based on reliance on prior audit advice because the Department applied the correct
8 rule to the rebate payments in the most recent audit of the predecessor.

9 **AMNESTY**

10 On March 18, 2008, the Board ordered that for cases involving third-party cigarette rebates
11 subject to the amnesty interest penalty, the amnesty interest penalty applicable to the tax measured by
12 the rebates be relieved if, within 30 days of the Notice of Redetermination, the taxpayer either makes
13 full payment of the amount due, or enters into an installment-payment plan not exceeding 13 months
14 and successfully completes that agreement. Therefore, we recommend relief of the amnesty interest
15 penalty in accordance with the Board's March 18, 2008, order.

16 **OTHER DEVELOPMENTS**

17 None.

18
19 Summary prepared by Pete Lee, Business Taxes Specialist II
20
21
22
23
24
25
26
27
28