STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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:	)	
WOODLAND HILLS CAR WASH, INC.	)	Account Number: SR AC 13-880634 Case ID 299486
Petitioner	)	Woodland Hills, Los Angeles County

Type of Business: Gas station mini mart and car wash

Audit Period: 10/1/01 – 9/30/04

Item	Disputed Amount
Unreported cigarette rebates	$20,876

	Tax
As determined and protested	$1,722.31
Proposed tax redetermination	$1,722.31
Interest through 11/30/10	517.58
Total tax and interest	$2,239.89
Payments	1,262.59
Balance Due	$ 977.30
Monthly interest beginning 12/1/10	$2.68

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 they were.

The Sales and Use Tax Department (Department) found that petitioner received $20,876 in cigarette rebates from cigarette manufacturers, and that petitioner was required to reduce the selling price of cigarettes to its customers by the amount of the applicable rebates. The Department concluded that the rebates were additional taxable gross receipts.

Petitioner contends that the disputed amounts are not taxable because: 1) they were not found to be taxable in prior audits; 2) petitioner could not collect sales tax reimbursement from his customers on the amount of the rebates because the manufacturers mandated a preset selling price and the cigarette displays were clearly marked with that selling price; and 3) a portion of the amount received from cigarette manufacturers was for display rental and not subject to tax on that basis. In support of its contentions, petitioner submitted two letters to show that the Department accepted the tax returns that petitioner had filed during the prior audit periods, and also submitted a series of agreements with Philip Morris USA Inc. to show that a portion of the rebates was for nontaxable display rental. The Department states that Bhupinder Singh Mac (the president of petitioner), had operated a partnership business under the business name "Mac Chevron," and that he was advised in an audit report dated January 24, 1997, that cigarette rebate income is taxable. The Department asserts that petitioner has not established that the Philip Morris agreements allocated a portion of the amount petitioner received from Philip Morris to cigarette display rental.

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

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

Petitioner submitted two letters, dated January 24, 1997, and February 25, 2004, to show that the Department accepted the tax returns that petitioner filed during the prior audit periods. Petitioner

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

contends that since the rebates were not found to be taxable in the prior audits, it should be relieved of the tax liabilities. We have reviewed the prior audits. The audit workpapers for the 1993-1996 audit indicate that there were cigarette sales at the location and the auditor's activity record reflects that information on cigarette rebates was requested from petitioner, and that petitioner advised the auditor that it was obtaining that information. A later entry states that the names of petitioner's cigarette suppliers would be obtained from petitioner and contacted for cigarette rebate information. There are, however, no further entries in the activity record referencing rebate payments and thus no indication as to whether petitioner's suppliers were subsequently contacted and, if they were, whether they provided any information to the Department regarding rebate payments. Other than the activity record section, the audit workpapers contain no information about rebate payments received by petitioner and no statements as to whether the Department regarded any such payments as taxable. The audit workpapers for the 1998-2001 audit contain no reference to cigarette sales having been made or rebate payments having been received during the audit period. Based on our review of the audit workpapers for the prior audits, we find that there is insufficient evidence to conclude the Department knew that petitioner received rebate payments without paying sales tax on such amounts.

Thus, the record does not reflect whether the Department ever received the necessary information to conclude that petitioner received rebate payments during the earlier prior audit or whether the Department would have regarded such payments as taxable. However, on the same date the Department issued its letter related to that prior audit, the Department also issued its report in the related account, and that report is clear the Department identified rebates as subject to tax. Under these facts, we find no basis for relief under section 6596.

AMNESTY

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

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

OTHER DEVELOPMENTS

None.

Summary prepared by Pete Lee, Business Taxes Specialist II