

1 from cigarette manufacturers was for display rental and not subject to tax on that basis. In support of
2 its contentions, petitioner submitted two letters to show that the Department accepted the tax returns
3 that petitioner had filed during the prior audit periods, and also submitted a series of agreements with
4 Philip Morris USA Inc. to show that a portion of the rebates was for nontaxable display rental. The
5 Department states that Bhupinder Singh Mac (the president of petitioner), had operated a partnership
6 business under the business name “Mac Chevron,” and that he was advised in an audit report dated
7 January 24, 1997, that cigarette rebate income is taxable. The Department asserts that petitioner has
8 not established that the Philip Morris agreements allocated a portion of the amount petitioner received
9 from Philip Morris to cigarette display rental.

10 Regarding petitioner’s contention that it was unable to reimburse itself for the sales tax due on
11 the rebates, we note that petitioner’s ability to collect sales tax reimbursement on the amount of the
12 rebates does not impact the taxability of those rebates. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18,
13 § 1700, subd. (a).) Specific payments (known as “rebates”) from a third party such as the
14 manufacturer in exchange for making retail sales of cigarettes for a reduced price (i.e., for a reduction
15 at least equal to the rebate amount) are subject to tax. Although we noted in the D&R that we would
16 review any additional information petitioner submitted to show that a portion of the disputed payments
17 were related to display rentals, it did not submit any such additional documentation, and we find no
18 support for its contention from our review of the agreements petitioner provided us. According, we
19 find petitioner has not overcome the presumption that all gross receipts are subject to tax and conclude
20 we have no basis upon which to recommend any adjustment.

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

23 Petitioner submitted two letters, dated January 24, 1997, and February 25, 2004, to show that
24 the Department accepted the tax returns that petitioner filed during the prior audit periods. Petitioner
25 contends that since the rebates were not found to be taxable in the prior audits, it should be relieved of
26 the tax liabilities. We have reviewed the prior audits. The audit workpapers for the 1993-1996 audit
27 indicate that there were cigarette sales at the location and the auditor’s activity record reflects that
28 information on cigarette rebates was requested from petitioner, and that petitioner advised the auditor

1 that it was obtaining that information. A later entry states that the names of petitioner's cigarette
2 suppliers would be obtained from petitioner and contacted for cigarette rebate information. There are,
3 however, no further entries in the activity record referencing rebate payments and thus no indication as
4 to whether petitioner's suppliers were subsequently contacted and, if they were, whether they provided
5 any information to the Department regarding rebate payments. Other than the activity record section,
6 the audit workpapers contain no information about rebate payments received by petitioner and no
7 statements as to whether the Department regarded any such payments as taxable. The audit
8 workpapers for the 1998-2001 audit contain no reference to cigarette sales having been made or rebate
9 payments having been received during the audit period. Based on our review of the audit workpapers
10 for the prior audits, we find that there is insufficient evidence to conclude the Department knew that
11 petitioner received rebate payments without paying sales tax on such amounts.

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

18 **AMNESTY**

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

25 **OTHER DEVELOPMENTS**

26 None.

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