

BEFORE THE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Claim for Refund Under the  
Sales and Use Tax Law of:

WFS Financial, Inc.  
SR EAA 52-009479  
56535

Appearances:

For Claimant:

Mr. Peter Larson, Attorney At Law  
Akerman, Senterfitt & Eidson, P.A.

Mr. Richard Neilsen, Attorney At Law  
Pillsbury, Madison & Sutro, L.L.P.

For Appeals Section:

Ms. Susan Wengel, Senior Tax Counsel

For the Sales and Use Tax Department:

Ms. Janice Thurston, Senior Tax Counsel

MEMORANDUM OPINION

This opinion considers the merits of a claim for refund of an unspecified amount for the period January 1, 1996, through November 29, 1999. The claim for refund is for bad debt deductions for defaults on certain finance contracts purchased without recourse from various vehicle dealers.

WFS Financial, Inc. and affiliates (Claimant), is a financial institution that during the period at issue did not hold a seller's permit with the Board of Equalization (Board). Claimant described the transactions at issue as follows. The taxable sales were made through installment sales agreements with the dealers. Those dealers made credit sales of motor vehicles at retail, entered into with various California purchasers. Pursuant to these installment sales agreements, the purchasers promised to pay the agreed upon sales price and additional charges, plus sales tax reimbursement, to the dealers. The dealers reported the sales tax to the Board, based on the agreed upon sales price. Under the sales agreements, after receiving credit for down payment amounts, the purchasers financed the balance due with the dealers at a specified interest rate. The agreements also provided that the dealers held security interests in the vehicles until the purchasers paid off the vehicles. The dealers then, immediately assigned the sales agreements to claimant without recourse. The dealers always intended to assign all the sales agreements to claimant and obtained claimant's approval of the purchasers, the financed balances, and the interest rates before the dealers entered into the sales agreements with the purchasers.

Under the sales agreements, the purchasers continued to pay sales tax reimbursement as part of their installment payments to claimant. If the purchasers defaulted on their finance contracts, claimant had the right to repossess the subject vehicles.

The claim at issue pertains to transactions where the purchasers defaulted and, in most cases, claimant repossessed and resold the subject vehicles. After claimant applied all repossession proceeds and all proceeds from other collection efforts to the amounts still owed by the purchasers, unpaid balances remained. After deeming the unpaid balances to be uncollectable, claimant wrote off the unpaid balances as bad debts for income tax purposes.

The Board's audit staff denied the claim for refund of the alleged bad debts on the basis that only two types of persons who hold seller's permits are entitled to claim bad debt deductions under Revenue and Taxation Code section 6055. One is the retailer who sold the property, and the other is a successor to the business of the original retailer, if the successor purchased the retailer's accounts receivable for full consideration (i.e., not at a discount).

Claimant's position is that it is entitled to a refund under section 6055 for the portions of the unpaid balances that are attributable to sales tax reimbursement that the purchasers failed to pay.

#### OPINION

Revenue and Taxation Code section 6055 provides, in pertinent part, that:

“A retailer is relieved from liability for sales tax... insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes.... If the retailer has previously paid the tax, he may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off....”

The Board has interpreted this statute in California Code of Regulations, title 18, section 1642, subdivision (b)(1), which presently provides, in relevant part, that:

“(h) SPECIAL SITUATIONS.

“ (1) Bad Debt Deductions to Persons Other Than the Retailer.

“(A) A successor who pays full consideration for receivables acquired from the predecessor is entitled to a bad debt deduction to the same extent that the predecessor would have been entitled had the predecessor continued the business.”

We find that claimant should be granted a bad debt deduction or refund when all of the following conditions are shown to have occurred:

1. Claimant's representatives were either present on the dealers' premises or immediately available by telephone, facsimile, or computer connection at the time the vehicles in question were sold;
2. Claimant paid full consideration to the dealers for the receivables in question, i.e., claimant did not purchase the receivables at a discount; and
3. The dealers' assignments to claimant of the receivables in question were substantially contemporaneous with the execution of the sales agreements between the dealers and the purchasers.

We find that, in this case, all of the above conditions have been met, and that claimant is a successor that paid full consideration for receivables and qualifies for a bad debt deduction or refund. Because claimant's refund request has not specified an exact amount, we direct the Board's audit staff to review claimant's records to ascertain the amount of the refund in accordance with Regulation 1642. Once this dollar amount is computed, a bad debt deduction or refund should be granted for that amount.

Done at Sacramento, California, this 14th day of December, 2000.

Mr. Andal \_\_\_\_\_, Chairman

Mr. Parrish \_\_\_\_\_, Member

Mr. Chiang \_\_\_\_\_, Member

Ms. Mandel\* \_\_\_\_\_, Member

\*For Kathleen Connell, per Government Code section 7.9.