STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
TAXPAYERS' RIGHTS ADVOCATE OFFICE MIC: 70
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State Controller

DAVID J. GAU
Executive Director

August 5, 2016

Mr. Rex Halverson
1201 K St #1990
Sacramento, CA 95814

Dear Mr. Halverson:

Thank you for your participation in the Board of Equalization's (BOE's) May 24, 2016 Business Taxpayers' Bill of Rights Hearings held in Sacramento. I appreciate you taking the time to voice your concerns regarding one of your client's collection issues, gas stations selling E85 fuel, and BOE headquarters' policy regarding accepting hand-delivered materials for the Petition Section.

The TRA Office performed an independent review of your client's case and discussed your other concerns with affected BOE areas, and we would like to share our findings with you.

***Concern #1: Disputed Responsible Person Dual Determination***

Your client was a LLC member for a business that closed in August 2008 and did not file its sales and use tax returns for the period of January through August 2008. A compliance assessment (estimated billing) based on the prior returns was made for the same period and the LLC did not file a timely petition for redetermination. A dual determination was issued against your client as a responsible person and she also did not file a timely petition for redetermination. Numerous collection actions were taken against your client during the past few years. In your presentation you expressed the concern that your client should not have been held responsible and that the compliance assessment was overstated.

Your client claims that her ex-husband, who is currently living outside the country, was the actual owner of the business. Your client states that she is listed as the LLC member because her husband was an undocumented immigrant and was not eligible to be a LLC member. She further states that her husband made her sign all the company's financial documents and checks but she was never involved in the business operation.

My staff carefully scrutinized the evidence used to hold your client personally responsible for the debt incurred by the LLC. Unfortunately, based on the supporting documents relied on by BOE staff, we have concluded that there is no evidence to show that the dual determination was issued incorrectly. We would be glad to reevaluate this case if any new evidence is presented to support your client's claim.

In regard to your request to have the finality penalty waived, current BOE policy only allows the finality penalty to be waived if the taxpayer enters into a payment plan within 45 days of the determination finality date and completes the payment plan. In regard to your question about the relief of interest, Revenue and Taxation Code (RTC) section 6593.5 states as follow:

> *(a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part under the following circumstances:*
>
> > *1) Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.*

*(2) Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.*

*(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.*

*(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.*

*(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.*

Your client did not enter into a payment plan within 45 days of the finality date; therefore the finality penalty cannot be waived. Interest cannot be waived because it appears that neither of the circumstances cited by RTC section 6593.5 applies to your client's situation.

According to collection notes and our office's last conversation with staff of the office of account, it appears that you had already helped your client significantly lower her liability. Please do not hesitate to let me know if the TRA Office can be of any further assistance to your client.

***Concern #2: Permit Requirement for E85 Mixed Fuel Seller***

You described your client's situation as an example of the need for BOE to provide more guidance to the public about the requirement for a seller of E85 mixed fuel to have a vendor use fuel tax permit. Your client, who operates a gas station, added a pump selling E85 mixed fuel a few quarters after he acquired a seller's permit. However, he did not timely obtain a vendor use fuel tax permit because he did not know that he needed a separate permit for selling E85 mixed fuel.

The TRA Office contacted the Program Policy & Administration Branch of the Business Tax and Fee Department, and recommended that they provide more guidance to the public about the requirement of a vendor use fuel tax permit for sellers of E85 mixed fuel. As a result of the TRA Office's efforts, the Program Policy & Administration Branch agreed to take the following actions:

1. Revise the BOE-5-TK4 letter that is currently sent to new sales tax accounts that are coded as "g" (gas station retailers) to include information regarding the potential requirement for a vendor use fuel permit;

2. Draft a notice and email to inform existing gasoline retailers of the potential need for a vendor use fuel permit if they are selling alternative fuels;

3. Include a brief article in the September 2016 Tax Information Bulletin (TIB) regarding vendor use fuel permits (there was a related article in the June 2016 TIB);

4. Include an article in the December 2016 Special Taxes Newsletter;

5. Update the online registration question and help text related to selling alternative fuel to specifically identify E85 as an alternative fuel; and

6. Update Publication 25, *Auto Repair Garages and Service Stations*, to provide more clarification about the requirement to register for a use fuel tax permit.

Enclosed is a copy of the online registration question for your information. The TRA Office will continue monitoring the remaining notifications to make sure that these changes take place in a timely manner.

***Concern #3: Dropping off Records at the Front Reception Counter at BOE's Headquarter Building***

You stated that you recently experienced difficulty dropping off petition related records at the BOE headquarters front reception counter. You indicated that Petitions Section staff did not go downstairs in a reasonable amount of time to pick up the records from you.

The TRA Office directly communicated with the Petitions Section, Administration Department, and the manager at the front reception desk in regard to your concern. All parties agreed to continue working with you to allow you to drop off records at the BOE's headquarter building. The Petitions Section has indicated that they will have staff meet you in the lobby for time sensitive documents and the front reception desk has a date stamp machine to stamp any non-time sensitive documents. Because petition related documents are extremely time sensitive, we encourage you to wait in the lobby for few minutes for the petition staff to pick up the records from you. Please let me know if you experience any further difficulties regarding this matter.

Thank you again for sharing your thoughts as part of the annual hearing process. If you have any further need of my office's assistance, please do not hesitate to contact me at 1-916-324-2798.

Sincerely,

Todd C. Gilman, Chief
Taxpayers' Rights and
Equal Employment Opportunity Division

TCG: kw

Halverson response 080516.docx

Enclosure:

online registration question

cc: Honorable Fiona Ma, CPA, Chairwoman
Honorable Diane L. Harkey, Vice Chair
Honorable George Runner, First District
Honorable Jerome E. Horton, Third District
Honorable Betty T. Yee, State Controller
Ms. Yvette Stowers, Deputy State Controller
Ms. Genevieve Jopanda, Member's Office, Second District
Mr. Russell Lowery, Member's Office, Fourth District
Mr. Jordan Marks, Member's Office, Fourth District
Ms. Lisa Renati, Member's Office, Fourth District
Mr. Sean Wallentine, Member's Office, First District
Ms. Michele Brown, Member's Office, First District
Mr. Brian Wiggins, Member's Office, First District
Ms. Kari Hammond, Member's Office, Third District
Mr. David Gau, Executive Director (MIC 73)

Ms. Amy Kelly, Acting Chief Counsel (MIC 83)
Ms. Susanne Buehler, Deputy Director, Business Tax and Fee Department (MIC 43)
Ms. Joann Richmond, Chief, Board Proceedings Division (MIC 80)
Ms. Edna Murphy, Deputy Director, Administration Department (MIC 69)
Mr. Robert Tucker, Assistant Chief Counsel, Tax and Fee Programs Division (MIC 82)
Chief, Tax Policy Division (MIC 92)
Mr. Kevin Hanks, Chief, Headquarters Operations Division (MIC 49)
Mr. Wayne Mashihara, Deputy Director, Field Operations Department (MIC 47)
Mr. Dan Leddy, Manager, Taxpayers' Rights Advocate Office (MIC 70)
Ms. Laureen Simpson, Technical Advisor to the Advocate (MIC 70)
Mr. Kai Wang, Taxpayers' Rights Advocate Office (MIC 70)

**Enclosure:**

**Registration - Business Activities** For assistance during regular business hours call **1-800-400-7115 (TTY:711)**

**My business activity includes (select all that apply):**

**Fuel Products (i.e. Selling, storing, importing, manufacturing, or distributing fuel products in California or operating an oil refinery, marine terminal, or pipeline to transport crude oil out of the state or petroleum products into the state.)**

1. ☐ Operating a gas station

   a. ☐ Selling fuels other than gasoline and diesel (e.g. blended alcohol fuels containing 15% or less gasoline by volume (E85), compressed natural gas (CNG), liquid natural gas (LNG), or liquefied petroleum gas (LPG)).

   b. ☐ Selling tax paid, undyed diesel fuel to farmers for use on a farm for farming purposes or to exempt bus operators for use in an exempt bus operation without the diesel fuel tax included pursuant to an exemption certificate.

2. ☐ Selling and delivering alternative fuel (e.g. blended alcohol fuels containing 15% or less gasoline by volume (E85), Compressed natural gas (CNG), liquid natural gas (LNG), or liquefied petroleum gas (LPG)) into the fuel tank of a motor vehicle.