CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of: E.W. INTERNATIONAL TRADE, INC., dba Kobe Japanese Cuisine and Bar Petitioner	Account Number SR BH 100-732650 Case ID 719634 Foster City, San Mateo County

Type of Business: Restaurant

Audit period: 10/01/08 – 12/31/10

Item	Disputed Amount
Unreported taxable sales	$873,996
Unreported sales of fixtures and equipment	$ 40,000
Negligence penalty	$ 8,301

Tax as determined and protested	$ 83,012.14
Interest through 05/31/15	27,494.10
Negligence penalty	8,301.23
Total tax, interest, and penalty	$118,807.47
Monthly interest beginning 06/01/15	$ 415.06

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported taxable sales. We find no adjustment is warranted.

Petitioner operated a restaurant from April 2006 through December 2010. The Sales and Use Tax Department (Department) audited petitioner in conjunction with the successor account (SR BH 102-173338), in which petitioner's corporate secretary is the corporate president.

Petitioner provided relatively complete records for audit. The Department found that the amount of funds deposited in the bank exceeded reported total sales by $846,365. Also, the amount of sales recorded in petitioner's sales journals exceeded reported total sales by $873,994. Since those figures were fairly consistent, the Department concluded that recorded total sales were substantially accurate. Therefore, it established recorded, but unreported, taxable sales of $873,996 (rounded).

Although the petition for redetermination asserts that the amount of unreported taxable sales should be reduced, petitioner has not provided any argument or evidence to support that position. At the appeals conference, petitioner asserted that its corporate officer, Ms. Jackie Kim-Callo should not be held personally liable for the audit liability of the corporation. We explained to petitioner that a Notice of Determination has not been issued to Ms. Kim-Callo as an individual, and that her potential personal responsibility for the liability was not before us.

Petitioner's recorded sales exceeded the amount reported by $873,996. Petitioner has not provided evidence, or even argued, that its recorded sales were incorrect. Thus, we find no adjustment is warranted.

Issue 2: Whether adjustments are warranted to the unreported sales of fixtures and equipment. We find no adjustment is warranted.

Petitioner sold its business on or about December 31, 2010, to Kobe GSW, Inc. In the Asset Purchase Agreement dated January 2, 2011, $50,000 of the $250,000 selling price of the business was allocated to the inventory, fixtures, and equipment. The Department estimated a value of $10,000 for inventory and regarded $40,000 as the selling price of the fixtures and equipment. Therefore, the Department assessed tax on an unreported sale of fixtures and equipment of $40,000.

Petitioner contends that the selling price of the fixtures and equipment is overstated. However, it has not provided the closing balance sheet, which the Department requested. Accordingly, petitioner has not provided records from which a more accurate selling price of the fixtures and equipment could be determined.

We find the Department's allocation of the $50,000 as $10,000 for inventory and $40,000 for fixtures and equipment to be reasonable. Further, we note that the beginning and ending inventories reported on petitioner's income tax return for 2009 were $3,500 and $2,000, respectively. Thus, it appears that the Department's estimate of $10,000 for the selling price of the inventory was reasonable, and perhaps generous. Further, petitioner has provided no evidence to support its assertion that the selling price of the fixtures and equipment was less than the $40,000 established by the Department. Accordingly, we find no adjustment is warranted.

Issue 3: Whether petitioner was negligent. We find that it was.

The Department imposed the negligence penalty because the understatement was significant and because the understatement represents recorded, but not reported, sales. Petitioner disputes the penalty because the business had not been audited previously.

Although petitioner provided reasonably complete records for audit, it did not accurately report the amounts of sales recorded therein. The understatement of reported taxable sales of $873,996 is substantial and represents an error rate of 236 percent in comparison to reported taxable sales of $370,210. Petitioner has not provided a non-negligent reason for reporting less than 30 percent ($370,210 ÷ $1,244,206) of its *recorded* taxable sales. We find that the failure to report the total amount of sales shown in its own records is strong evidence of negligence. Further, we find that any businessperson, even one with limited experience, should recognize that all recorded sales need to be reported. Accordingly, we find petitioner was negligent and that the penalty was properly imposed, even though petitioner had not been audited previously.

OTHER MATTERS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III