State of California

Board of Equalization
Legal Division-MIC: 82

Memorandum

To : Mr. Monte Williams, Chief
Excise Taxes Division MIC:56

Date: January 27, 1997

From : Ms. M. Judith Nelson MJNelson
Tax Counsel MIC:82

Subject:

Joint and Several Liability of General Partners

Introduction. This is in response to your January 2, 1997 memo to Mary Armstrong in which you requested an opinion as to the circumstances under which a general partner may be relieved of liability for partnership debts. As I understand the situation, was operating as a partnership (the "Partnership") during the period for which the Board has determined taxes are owed, and, ") and were the sole general partners of the Partnership. The Board investigated the Partnership for the sale of unstamped cigarettes and as a result of the investigation, was prosecuted and convicted under Revenue and Taxation Code Sections 30474 and 30480 which sections impose criminal penalties for the knowing possession of unstamped cigarettes for sale. The Board did not seek criminal sanctions against because it lacked the evidence that knowingly participated in the unlawful distribution of cigarettes. Subsequently, the Board issued a determination to the Partnership in the amount of $96,916.39 for cigarette taxes owing under Revenue and Taxation Code Section 30101. has requested that he not be held liable for the amount of the tax.

Conclusion. Generally, the Uniform Partnership Act imposes joint and several liability on all partners for wrongful acts or omissions of one partner acting in the ordinary course of the business of the partnership. It does not matter that one of the partners is a dormant or silent partner. If a partnership exists, then all of the general partners are liable for the debts of the partnership.

Discussion. California Corporations Code Section 15015 provides that except in certain cases not relevant to this situation, all partners are liable jointly and severally for everything chargeable to the partnership as a result of breach of trust or wrongful acts or omissions of a partner. Partners are jointly liable for all other debts and obligations of the partnership.

Corporations Code Section 15013 states:

> "Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is

caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act."

It appears that the taxes imposed by the Board are the result of the wrongful act or omission of . in not paying the taxes when due. The Partnership was engaged in the business of importing and distributing Mexican products for sale in the United States. The Partnership failed to pay taxes on the Mexican cigarettes which it imported and distributed. Therefore, the Partnership became liable for the tax pursuant to Revenue and Taxation Code Section 30101, and the partners became jointly and severally liable for the Partnership debt. Unlike the penalties assessed under Revenue and Taxation Code Section 30470 (where a person may be found guilty of a misdemeanor or felony if that person knowingly possesses unstamped cigarettes for sale), neither intent nor knowledge is a prerequisite to imposition of the tax pursuant to Revenue and Taxation Code Section 30101.

If it could be shown that were not a partner in the Partnership, or that the Partnership did not incur the cigarette tax because the tax was incurred by a person other than the Partnership, then the result would be different. However, it is my understanding that no such showing has been made to date.

What has been submitted as evidence that no Partnership existed as to the sale of cigarettes is a letter from nd a letter from claims in his letter which is addressed "To whom this may concern" that the "... sale of cigarettes was not conducted within the scope of the partnership's business activities. I conducted my sales of Mexican Cigarettes as a sole proprietor--separate and distinct from the claims in his letter addressed to "Dear State Board of Equalization Officer" that " operated his sale of cigarettes outside the expressed scope of our partnership's business activities. He never informed me of these activities nor did I have any knowledge of such activities until I was notified by the Board of Equalization." I note that no evidence was provided to define what the "expressed scope of our partnership's business" might be. The Board was not provided a business plan, or a copy of a partnership agreement. Nor has role in the running of the day-to-day business enterprise of the Partnership been explained. The Board has what is purported to be a copy of a Partnership tax return. However the copy is unsigned and it is not clear if it was ever filed. Also, it is not clear if the cigarette operations were included in the calculations in preparing the Partnership tax return. Furthermore, it is not clear whether shared in the profits of the cigarette operation, or whether the cigarette purchases and sales were separately accounted for b and excluded from the Partnership income.

Since the memo and attachments provided for our review lack convincing evidence to support a claim that the debt for cigarette taxes pursuant to Revenue and Taxation Code Section 30101 is not a debt of the Partnership, or that was not a partner of the Partnership, I assume that no such evidence has been provided. Absent such evidence, I conclude that should be held liable for the tax liability incurred by the Partnership.

cc: Ms. Janet Vining