

STATE OF CALIFORNIA

BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| In the Matter of the Petition | ) |                             |
| for Redetermination Under the | ) | DECISION AND RECOMMENDATION |
| Sales and Use Tax Law of:     | ) |                             |
|                               | ) |                             |
| REDACTED TEXT                 | ) | No. REDACTED TEXT           |
|                               | ) |                             |
|                               | ) |                             |
| <u>Petitioner</u>             | ) |                             |

The Appeals conference in the above-referenced matter was held by Senior Staff Counsel H. L. Cohen on June 9, 1994 in San Francisco, California.

|                           |   |
|---------------------------|---|
| Appearing for Petitioner: | No appearance (No response to Notice of Conference) |
|---------------------------|---|

|  |   |
|--|---|
| Appearing for the<br>Sales and Use Tax Department: | Mr. E. Pollack<br>Compliance Supervisor<br>San Francisco Office |
|--|---|

REDACTED TEXT  
Witness

Protested Item

The protested tax liability for the period April 1, 1990 through July 31, 1991 is:

|                                       |             |
|---------------------------------------|-------------|
| Tax and interest due from partnership | \$37,419.90 |
|---------------------------------------|-------------|

Contention

Petitioner contends that he was only a limited partner in the business and therefore not liable for the debts of the partnership.

## Summary

Petitioner and REDACTED TEXT, as general partners, operated a restaurant under the name of REDACTED TEXT. The restaurant encountered financial difficulties and the business was reorganized. A new partnership was formed. The new written partnership agreement showed REDACTED TEXT and REDACTED TEXT as general partners, and petitioner and others as limited partners. The new partnership opened a restaurant at the same location under the name of REDACTED TEXT. Petitioner and REDACTED TEXT continued to own the liquor license for the location. Mr. REDACTED TEXT was responsible for the food service and Mr. REDACTED TEXT was responsible for the financial aspects of the business. Mr. REDACTED TEXT, Mr. REDACTED TEXT, and petitioner were authorized to sign checks for the new partnership.

Mr. REDACTED TEXT states that during the period under audit, he signed no checks, although he was authorized to do so. Mr. REDACTED TEXT also states that during this period, petitioner issued approximately \$40,000 in checks on the REDACTED TEXT account for payment of debts incurred by the operation of the REDACTED TEXT restaurant. He also states that the federal Internal Revenue Service found petitioner to be a general partner in the REDACTED TEXT partnership.

The auditor concluded that because petitioner had check-signing authority and was part owner of the liquor license, he was a general partner and was liable for the tax deficiencies of the partnership. Petitioner apparently had the authority to make decisions as to which bills to pay and when to pay them for the REDACTED TEXT partnership.

Petitioner contends that he did not participate in the operation of REDACTED TEXT and was only a limited partner. He states that the REDACTED TEXT partnership agreement contemplates paying debts of the REDACTED TEXT partnership and that the checks which he signed were solely for the purpose of paying creditors of REDACTED TEXT.

## Analysis and Conclusions

Section 15006 of the Corporations Code provides that a partnership is an association of two or more persons to carry on as co-owners a business for profit. Section 15015 provides that all partners are liable jointly for all debts and obligations of the partnership. Section 15501 provides that limited partners as such shall not be bound by the obligations of the partnership. Section 15507(a) provides that a limited partner shall not become liable as a general partner unless an addition to the exercise of his rights and duties as a limited partner he takes part in the control of the business. If petitioner is a limited partner, he is not liable for the debts of the partnership. If he is a general partner, he is so liable. The difference between a general and a limited partner is the control over the business activities of the partnership. While petitioner did not participate in the day-to-day operation of the restaurant, by having the authority to decide which bills to pay along with the right to sign checks without consultation with the named general partners, he was exercising a very basic control over the activities of the partnership business. Direct financial control is in a very real sense the ultimate control of the business. That control is inconsistent with the status of limited partnership. I conclude that petitioner was a general partner and is thus liable for the debts of the partnership.

REDACTED TEXT

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August 8, 1994  
170.0300

Recommendation

Deny the petition.

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H. L. Cohen, Senior Staff Counsel

8/8/94  
Date