

| <u>Period</u> | <u>Permit No.</u> | <u>Operated By</u> |
|--------------------|-------------------|--------------------|
| 3/12/70 – 5/31/75 | _____ | _____ |
| 6/1/75 – 11/16/75 | _____ | _____ |
| 11/17/75 – Present | _____ | _____ |

According to available information, _____ encountered financial problems during the period of his operation of the station as an individual, and as a result was unable to obtain gasoline from its supplier (_____) unless the outstanding debt to _____ was paid. At this point _____ appeared and agreed to pay _____ outstanding debt to _____ for a 50% interest in _____ business, which was to be reorganized as a partnership of _____ and _____. The debt to _____ was paid by _____ in May 1975.

_____ permit was closed-out on 5/30/75 and a new permit, _____ was issued to the partnership of _____ with a starting date of 6/1/75 under which the operations of the station were continued at the same location.

A close-out audit, dated 6/17/76, of the operations of _____ under his individual seller's permit disclosed a substantial liability for unreported taxes in addition to liability for unpaid non-remittance returns filed for the months of January, February, March and May, 1975.

The operations of the partnership apparently were not profitable and the permit was close-out on 11/16/75 with _____ continuing the operations as a sole proprietorship under _____ effecting 11/17/75. Substantial unpaid tax liability was also determined against the partnership for the period of its operations.

On November 1, 1976 Statement of Account was issued to _____ successor to _____.

Statement of Account dated November 4, 1976 also was issued to the partnership as successor to _____.

Statements of Account were also issued to _____ and to Mr. _____ in their individual capacities for the liability of the partnership as a result of its own operations and as successor to _____.

_____ has conceded responsibility for the liability occasioned by the operations of the partnership and that accruing during the period of his individual operations but denies responsibility for the liability determined against _____ during his individual operations of the business under Permit No. _____. _____ also contends that the partnership is not liable as a successor for _____ liability. A separate petition has been filed by _____ with respect to the issue of successor liability as it applies to the partnership. That issue is the subject of a separate report to be written.

In the instant case _____ contends he is not the successor to _____ and accordingly is not responsible for _____ liability.

It is argued that:

1. _____ did not sell his stock of goods or business since there was in fact nothing to sell. _____ at best was securing an opportunity to profit in the operation of a gas station by paying outstanding creditors, which included _____ and the State Board of Equalization.
2. _____ complied with the requirement of Section 6811 in that he paid directly to the State Board of Equalization the amount of tax computed to be due at the time from_____.
3. _____ nor the partnership received anything of value from _____ which could have been taken by the State to satisfy _____ tax liability.

According to Petitioner, on about May 26, 1975, _____ visited the office of the Board (Hollywood) and talked to Mr. Beebe, (a tax representative) about _____ tax account. _____ was told that the May payment was outstanding in the amount of \$877.00. _____ further advised that _____ had sufficient security to cover any other outstanding liabilities. On June 1, 1975, _____ visited the Board office again and confirmed the \$877.00 delinquency and was again told that that was the extent of _____ liability. _____ paid that amount on _____ account and a new account number was issued for the _____ partnership.

The Board's staff has no written record of the above conversation with _____ and the persons involved have no recollection of what was said. However, the record does show that no remittance returns were filed for January, February and March of 1975 with the unpaid liability greatly in excess of \$877.00 as of May 26, 1975, as follows:

| <u>Month</u> | <u>Tax</u> | <u>Int.</u> | <u>Pen.</u> | <u>Totals</u> |
|---------------|------------|-------------|-------------|---------------|
| January 1975 | \$905.25 | \$22.65 | \$90.53 | \$1,018.47 |
| February 1975 | 882.38 | 17.64 | 88.24 | 988.26 |
| March 1975 | 914.28 | 13.43 | 91.43 | 1,019.42 |

(Interest above computed July 31, 1975)

Security deposit in the amount of \$1,875.00 had been posted by _____.

No remittance return for the month of May 1975 in the amount of \$995.88 in unpaid tax also was filed.

The close-out audit liability was not established until 6/17/76.

Analysis and Conclusion

Section 6811 of the Revenue and Taxation Code provides:

“If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owners produces a receipts from the Board showing that it has been paid or a certificate stating that no amount is due.”

Section 6812 provides in relevant par as follows:

“If a purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money.”

The argument that _____ did not sell his stock of goods or business since there was nothing to sell, cannot be sustained.

While there is no record of the value of any inventory, gasoline, parts, oil, accessories, etc. in the possession of _____ at the time of the sale of the one-half interest to _____ there was a “business.”

“Business’ includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.” Section 6013, Revenue and Taxation Code.

_____ purchased one-half interest in the business of _____ and qualifies as a successor within the meaning of Sections 6811 and 6812 of the Revenue and Taxation Code. The amount paid by _____ to _____ on behalf of _____ constituted the purchase price required by statute to be withheld to cover the unpaid tax liability.

The fact that _____ paid an amount to the Board which he allegedly understood to be the total liability due under _____ account does not meet the requirement of Section 6812 for release of personal liability.

It is concluded that _____ is liable as a successor, for the tax liability of _____ to the extent of the purchase price for his interest in _____ business.

Recommendation

The Petitioner should remain liable as a successor to the extent of the purchase price paid for his interest in the business of _____.

Joseph Manarolla, Hearing Officer

6/15/77
Date

REVIEWED FOR AUDIT

Principal Tax Auditor

owners of the business previously operated by _____. Accordingly, Petitioner's partnership is not a successor within the meaning of Sections 6812 and 6811 of the Revenue and Taxation Code.

Recommendation

That the Statement of Account issued to the partnership of _____ and _____ be cancelled.

Joseph Manarolla, Hearing Officer

6/14/77
Date

REVIEWED FOR AUDIT:

Principal Tax Auditor

Date