

CALIFORNIA STATE BOARD OF EQUALIZATION

SUMMARY DECISION UNDER REVENUE AND TAXATION CODE SECTION 40

In the Matter of the Administrative Protest Under)	Case ID:	841617
the Cigarette and Tobacco Products Tax Law of:)	Oral hearing date:	April 27, 2016
SAHAK JEIRANIAN,)	Decision rendered :	August 17, 2016
)	Publication due by:	December 15, 2016
dba Royal Cigar)		
)		
)		
)		
Taxpayer)		

Representing the Parties:

For Taxpayer:	Sahak Jeiranian
For Investigations and Special Operations Division:	Pamela Mash, Tax Counsel
For Appeals Division:	Jeffrey G. Angeja, Tax Counsel IV

LEGAL ISSUE 1

Whether taxpayer is liable for tax on the distribution of cigarettes at issue herein.

FINDINGS OF FACT AND RELATED CONTENTIONS

On December 17, 2001, the Investigations and Special Operations Division (ISOD) visited Royal Cigar, a cigarette and tobacco products distributor, to inspect and verify all of its cigarette tax stamps. During its visit, ISOD spoke to taxpayer who initially identified himself as “Jack Jay” and the owner of the business. ISOD requested identification from taxpayer, which showed that his name was not Jack Jay but Sahak Jeiranian.¹ Taxpayer subsequently stated that he was not the owner of the business and that the true owner was in Armenia. Taxpayer refused to allow ISOD to conduct its inspection or answer any questions, and instructed ISOD to leave the business premises. Subsequently, ISOD initiated an investigation of Royal Cigar in order to determine whether it was distributing untaxed cigarettes.

¹ During an interview with taxpayer conducted by ISOD on April 2, 2003, taxpayer also referred to himself as “Jack,” which he explained is his English name.

1 As part of its investigation, ISOD received reports from Watkins Motor Lines, Inc. (Watkins),
2 which operates a transportation service and provides ISOD with delivery information pertaining to
3 shipments from out-of-state cigarette distributors to California purchasers. The report from Watkins
4 for April 2002 shows that taxpayer received shipments of cigarettes from out-of-state distributors at his
5 personal residence. Based on this evidence, ISOD conducted surveillance of taxpayer's residence on
6 August 9, 2002, and on September 11, 2002, and observed Watkins delivering cigarettes to an
7 unidentified person at taxpayer's residence. Shipping documents for those deliveries subsequently
8 obtained from Watkins also confirmed that these deliveries to taxpayer's residence consisted of
9 cigarettes from out-of-state distributors. ISOD also reviewed Royal Cigar's seller's permit application
10 and California Department of Motor Vehicles (DMV) records, and found that the address of "Jane
11 Doe"² was listed on Royal Cigar's seller's permit application, and that Ms. Doe's address was the
12 same as taxpayer's address; however, that address was different than the address listed on Ms. Doe's
13 driver's license. Also, on October 1, 2002, ISOD performed a cigarette inspection of Gilmar Manor,
14 an unrelated business, and seized 39 cartons and nine packs of unstamped cigarettes. ISOD found that
15 inside the carton flaps was stamped the name and address of Royal Cigar, and the general manager of
16 Gilmar Manor confirmed that the unstamped cigarettes were purchased from Royal Cigar.

17 On April 2, 2003, at the request of ISOD, officers from the California Department of Justice
18 executed a search warrant at taxpayer's residence, as well as Ms. Doe's residence, and at Royal Cigar's
19 premises. At taxpayer's residence, ISOD seized 695 cartons of unstamped cigarettes, 1,278 counterfeit
20 cigarette tax stamps, informational pamphlets from the Board regarding the responsibilities of a
21 licensed cigarette distributor, and business records for Royal Cigar, which include cigarette purchase
22 invoices, bank statements, cancelled checks, and Watkins delivery receipts. The cigarette purchase
23 invoices show that all of Royal Cigar's out-of-state cigarette purchases were delivered to either Royal
24 Cigar or taxpayer's residence, and the cancelled checks show that taxpayer's signature was used to
25 authorize payment for Royal Cigar's expenses including rent, cigarette purchases, and California sales
26 tax. ISOD also noted that taxpayer had the keys to Royal Cigar. In addition, ISOD seized 1,296

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28 ² Due to confidentiality constraints we decline to identify the names of individuals other than the taxpayer at issue herein.

1 cartons and 2,899 individual packs of unstamped cigarettes from Royal Cigar. ISOD also noted that a
2 counterfeit cigarette distributor's license (CR ET 45-331678) and a sign which states in pertinent part
3 "[u]nstamped cigarettes are for distributor's only" were posted on the wall of Royal Cigar. ISOD
4 contacted Royal Cigar's suppliers, who confirmed that taxpayer routinely presented himself as a
5 licensed cigarette distributor and issued the counterfeit cigarette distributor's license to them. No
6 business records or contraband were found at Ms. Doe's residence.

7 ISOD interviewed taxpayer, who asserted that Ms. Doe was the owner of Royal Cigar and that
8 the unstamped cigarettes purchased from out-of-state distributors were exported to Armenia and
9 Russia. ISOD also interviewed Ms. Doe, who stated that she filled out an employment application in
10 response to a job offer from taxpayer sometime in mid-2001. She also stated that she ultimately
11 decided not to work for taxpayer, and requested that he destroy her employment application. She also
12 said that she never owned or operated any business, or applied for a seller's permit or cigarette
13 distributor's license on behalf of Royal Cigar, but rather, she believes that taxpayer used the
14 information contained in her employment application to steal her identity and operate the business.
15 ISOD also interviewed Royal Cigar's accountant, who stated that he prepared Royal Cigar's sales and
16 use tax returns based on oral reports from taxpayer regarding its sales. Based on the untaxed cigarette
17 deliveries to taxpayer's residence on behalf of Royal Cigar, evidence seized during the execution of the
18 search warrant at taxpayer's residence, and the subsequent interviews, ISOD determined that taxpayer
19 owned Royal Cigar.

20 As part of its investigation, ISOD also obtained shipping records from United Parcel Service
21 (UPS) regarding deliveries to Royal Cigar from out-of-state distributors, and Royal Cigar's bank
22 statements and copies of cancelled checks from Bank of America, which show that taxpayer's
23 signature was used to authorize payment from Royal Cigar's account. Using the shipping records
24 obtained from UPS, ISOD contacted Royal Cigar's out-of-state cigarette suppliers and obtained sales
25 invoices. ISOD examined the sales invoices on an actual basis, and found that Royal Cigar purchased
26 15,977,000 cigarettes from out-of-state distributors. ISOD also examined the purchase invoices seized
27 from Royal Cigar and taxpayer's residence and found that Royal Cigar purchased an additional
28 1,112,000 cigarettes from out-of-state distributors. In total, ISOD found that Royal Cigar purchased

1 17,089,000 cigarettes from out-of-state distributors, which it verified by cross-referencing the invoices
2 it examined with Royal Cigar's shipping records and cancelled checks. ISOD also found that these
3 unstamped cigarettes were distributed because they were no longer in Royal Cigar's possession.
4 Further, because these cigarettes were purchased from out-of-state distributors without the payment of
5 tax, and Royal Cigar reported zero distributions during the liability period, ISOD determined that with
6 the exception of \$348 of cigarette tax stamps purchased by Royal Cigar, these cigarettes were
7 distributed without the payment of tax. Accordingly, ISOD applied a tax rate of \$.0435 per cigarette to
8 17,089,000 cigarettes, with an offset of \$348 to compute unreported cigarette distributions of
9 \$743,023.50 (17,089,000 x \$0.0435 - \$348). On March 28, 2011, ISOD issued a Notice of
10 Determination (NOD) taxpayer, dba Royal Cigar, for the period January 1, 2001, through May 12,
11 2003, for \$743,023.50 tax, plus applicable interest and \$244,963.73 in penalties.³

12 On appeal, taxpayer does not dispute ISOD's computation of the measure of tax. Rather,
13 taxpayer contends that he was not the owner of Royal Cigar. Specifically, taxpayer contends that he
14 was a victim of identity theft and that his roommate and Ms. Doe were the true owners of Royal Cigar.
15 Taxpayer also contends his signature was forged on the cancelled checks and any related business
16 documents, and that any evidence seized from his residence came from his roommate's room. In
17 addition, taxpayer contends that the documents used by ISOD to support its case (including the copies
18 of checks, and sales invoices from Royal Cigar's out-of-state suppliers) are not originals, but are
19 instead altered copies fabricated by ISOD in order to "set him up." In support of his contentions,
20 taxpayer provided the following: a notarized declaration from his roommate, dated April 2, 2010, in
21 which the roommate states that he was the true owner of Royal Cigar, that he shipped the cigarettes at
22 issue to Armenia and Russia, and that he operated the business under another Ms. Doe's name in order
23 to assist her with building her credit; a letter from Bank of America dated June 26, 2009, stating that it
24 was unable to produce a signature card for Royal Cigar's account; Royal Cigar's application for
25 seller's permit dated August 15, 2001, bearing Ms. Doe's signature and title as owner; an undated
26 Fictitious Business Name Statement for Royal Cigars bearing Ms. Doe's signature; a refund check

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28 ³ The penalties imposed upon taxpayer include a fraud penalty of \$185,755.88 and failure-to-file penalties totaling

1 from the Franchise Tax Board payable to Ms. Doe, sent to Royal Cigar's address; Royal Cigar's lease
2 dated February 2000, bearing the signatures of the roommate and Ms. Doe; Royal Cigar's unsigned
3 sales and use tax return for the fourth quarter of 2002; and a partial transcript of an ISOD investigator's
4 testimony under cross-examination related to this matter, in which the investigator stated under oath
5 that he did not witness taxpayer handling or selling cigarettes.

6 APPLICABLE LAW

7 The Cigarette and Tobacco Products Tax Law (Law) requires every person desiring to engage
8 in the sale of cigarettes or other tobacco products (hereafter tobacco products) to apply with the Board
9 for a distributor's license. (Rev. & Tax. Code, § 30140.) The Law additionally imposes upon every
10 distributor a tax, based on the wholesale cost of the tobacco products, upon the distribution of tobacco
11 products. (Rev. & Tax. Code, §§ 30101, 30123, 30131.2.) "Distributor" includes every person who
12 distributes tobacco products, or who sells or accepts orders for tobacco products that are to be
13 transported from a point outside this state to a consumer within this state. (Rev. & Tax. Code, §
14 30011.) The term "distribution" includes (1) the sale of untaxed cigarettes or tobacco products in this
15 state, (2) the "use or consumption" of untaxed cigarettes or tobacco products in this state, and (3) the
16 placing in this state of untaxed cigarettes or tobacco products in a vending machine or in a retail stock
17 for the purpose of selling the products to consumers. (Rev. & Tax. Code, § 30008.) "Use or
18 consumption" includes the exercise of any right or power over tobacco products incident to the
19 ownership thereof, other than the sale of the tobacco products or the keeping or retention thereof by a
20 licensed distributor for the purpose of sale. (Rev. & Tax. Code, § 30009.) Unless the contrary is
21 established, it shall be presumed that all tobacco products acquired by a distributor are untaxed tobacco
22 products, and that all tobacco products manufactured in this state or transported to this state, and no
23 longer in the possession of the distributor, have been distributed. (Rev. & Tax. Code, § 30109.)

24 ANALYSIS AND DISPOSITION

25 With respect to the ownership of Royal Cigar, we note that taxpayer's signature on Royal Cigar
26 checks was used numerous times to authorize payments from Royal Cigar's account. In other words,
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28 \$59,207.85 for the period January 2001 through March 2001, and the period September 2001 through May 2003.

1 the bank accepted a check with a signature of “Sahak Jeiranian” which establishes that taxpayer was
2 authorized to sign checks on that account. The foregoing is true regardless of whether taxpayer’s
3 signature was forged (of which there is no evidence), and despite the inability of Bank of America to
4 produce a signature card for Royal Cigar’s account. Further, as a signer on Royal Cigar’s only known
5 account, taxpayer had complete financial control of Royal Cigar, which indicates that he owned Royal
6 Cigar. Also, there is no evidence that anyone other than taxpayer was a signer on Royal Cigar’s
7 account, which indicates that taxpayer was the owner of Royal Cigar, rather than some other
8 individual.

9 In addition, Royal Cigar’s untaxed cigarette purchases, counterfeit cigarette tax stamps,
10 purchase invoices, and shipping documents, were seized from taxpayer’s residence. No evidence
11 related to Royal Cigar was found at Ms. Doe’s residence. Thus, the evidence seized pursuant to
12 ISOD’s search warrant is further evidence that taxpayer, and not someone else, owned Royal Cigar.
13 Although taxpayer contends that these items were seized from his roommate’s room, when ISOD
14 executed the search warrant on taxpayer’s residence, ISOD did not find any evidence that anyone other
15 than taxpayer and his wife resided there during that time, and none of Royal Cigar’s business records
16 seized at taxpayer’s residence bore the roommate’s name.

17 ISOD also witnessed unstamped cigarettes being delivered to taxpayer’s residence on behalf of
18 Royal Cigar, and the seized purchase invoices, sales invoices obtained from Royal Cigar’s out-of-state
19 suppliers, and shipping records obtained from UPS and Watkins further confirm that a significant
20 number of Royal Cigar’s untaxed cigarette purchases were delivered to taxpayer’s residence, which is
21 further evidence that taxpayer was the owner of Royal Cigar. Also, during the execution of the search
22 warrant at taxpayer’s residence, ISOD found that taxpayer had the keys to Royal Cigar, and on
23 December 17, 2001, ISOD found taxpayer operating Royal Cigar.

24 Taxpayer also contends that ISOD fabricated or altered copies of original source documents in
25 order to “set him up.” We note that the seized purchase invoices and sales invoices obtained from
26 Royal Cigar’s out-of-state suppliers were also verified against documents obtained directly from UPS,
27 Watkins, and Bank of America, which indicates that they were not fabricated or altered by ISOD.
28 Further, there is no evidence whatsoever that ISOD fabricated or altered any documents, and we can

1 think of no plausible explanation for why ISOD would do so. Therefore, we reject taxpayer's
2 contention that ISOD fabricated or altered original source documents.

3 Regarding Royal Cigar's lease and the testimony of the ISOD investigator, we note that there
4 were no Royal Cigar business records or checks naming any other individual found at any other
5 person's residence. Accordingly, we find that the Royal Cigar lease bearing other individuals' names
6 does not establish that taxpayer did not own Royal Cigar. Further, we note that the investigator only
7 visited Royal Cigar once on April 2, 2003, during the execution of the search warrant, and thus the fact
8 that he did not personally witness taxpayer handling or selling cigarettes is not evidence that taxpayer
9 did not own Royal Cigar. Therefore, based on the overwhelming evidence indicating that taxpayer
10 was the owner of Royal Cigar, we find that taxpayer owned Royal Cigar.

11 Next, although taxpayer does not specifically dispute the measure of tax, we address the issue
12 from abundant caution. Here, the cigarettes at issue were no longer in Royal Cigar's possession at the
13 time the search warrant was executed on April 2, 2003, therefore they are presumed to have been
14 distributed.⁴ With respect to ISOD's calculation of Royal Cigar's untaxed cigarette distributions, we
15 note the seized purchase invoices and the sales invoices obtained from Royal Cigar's out-of-state
16 suppliers show that Royal Cigar purchased 17,089,000 cigarettes without the payment of tax. In
17 addition, Royal Cigar reported zero distributions on its monthly cigarette distributor's tax reports for
18 the period May 2001, through August 2001, and failed to file any reports for the remainder of the
19 liability period. Further, Royal Cigar purchased only \$348 worth of cigarette tax stamps. Therefore,
20 based on the available evidence we find ISOD's calculation of Royal Cigar's resulting tax liability to
21 be reasonable. We note that when a taxpayer challenges a determination, ISOD has the burden to
22 explain the basis for the deficiency, but where ISOD's explanation appears reasonable, the burden of
23 proof shifts to the taxpayer to explain why ISOD's asserted deficiency is not valid. (See *Riley B's, Inc.*
24 *v. State Board of Equalization* (1976) 61 Cal.App.3d 610, 615-616.) The applicable burden of proof is
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27 ⁴ We further note that even if some of the untaxed cigarettes at issue were found at Royal Cigar, those cigarettes would be
28 distributed because they were placed in retail stock for sale to consumers. (Rev. & Tax. Code, § 30008, subd. (c).)

1 by a preponderance of the evidence. That is, the taxpayer must establish by documentation or other
2 evidence that the circumstances it asserts are more likely than not, correct.

3 Taxpayer contends the cigarettes at issue were shipped to Armenia and Russia, and as a result,
4 they were not distributed. However, in the absence of any supporting evidence such as shipping or
5 customs documents showing that the cigarettes at issue were shipped to Armenia and Russia, we
6 decline to place any weight on the assertion that they were. Accordingly, we find that no adjustments
7 are warranted.

8 LEGAL ISSUE 2

9 Whether ISOD has provided clear and convincing evidence of fraud.

10 FINDINGS OF FACT AND RELATED CONTENTIONS

11 ISOD imposed a 25-percent penalty of \$185,755.88 on taxpayer for fraud or intent to evade tax
12 based on its finding that taxpayer intentionally avoided paying tax on its cigarette distributions
13 pursuant to Revenue and Taxation Code section 30224. Specifically, ISOD asserts that the fraud
14 penalty is warranted because taxpayer purchased 17,081,000 untaxed cigarettes from out-of-state
15 suppliers subject to \$743,371.50 tax (17,081,000 x \$0.0435), yet reported zero distributions on his
16 monthly cigarette distributor's tax report and purchased only \$348 in cigarette tax stamps. ISOD
17 contends that this significant underreporting is evidence of taxpayer's intent to evade the payment of
18 tax. ISOD also contends that taxpayer's failure to follow the requirements of the Cigarette and
19 Tobacco Products Law was intentional rather than the result of an honest mistake or negligence
20 because counterfeit cigarette tax stamps were seized from taxpayer's residence and Royal Cigar.
21 According to ISOD, taxpayer was also knowledgeable regarding the requirements of the Cigarette and
22 Tobacco Products Tax Law because ISOD mailed informational pamphlets regarding those
23 requirements to taxpayer, and those pamphlets were found at taxpayer's residence during the execution
24 of a search warrant on April 2, 2003. Further, ISOD contends taxpayer engaged in conduct intended to
25 conceal his evasion of the tax by using a stolen identity and a counterfeit cigarette distributor's license
26 to operate Royal Cigar. The Department found that given these facts and the totality of the
27 circumstances, that petitioner's actions cannot reasonably be construed as negligence, but rather they
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1 constitute clear and convincing evidence that petitioner willfully attempted to evade the payment of
2 tax.

3 On appeal, taxpayer offers no contentions or evidence regarding the imposition of the fraud
4 penalty, but rather, asserts that he is not the owner of Royal Cigar.

5 APPLICABLE LAW

6 Revenue and Taxation Code section 30224 provides for the addition of a 25-percent penalty if
7 any part of a deficiency determination is due to fraud or intent to evade the Law or authorized rules or
8 regulations. Fraud is intentional wrongdoing on the part of the taxpayer with the specific intent to
9 avoid a tax known to be due. (*Bradford v. Commissioner* (9th Cir. 1986) 796 F.2d 303, 307
10 (*Bradford*); see Sales and Use Tax Department Audit Manual (Audit Manual) § 0509.10.)⁵ Fraud must
11 be established by clear and convincing evidence. (*Cal. State Bd. of Equalization v. Renovizor's Inc.*
12 (9th Cir. 2002) 282 F.3d 1233, 1241; *Marchica v. State Bd. of Equalization* (1951) 107 Cal.App.2d
13 501, 508; see Cal. Code Regs., tit. 18, § 1703, subd. (c)(3)(C).)⁶ Although fraud may not be presumed,
14 it is rare to find direct evidence that fraud has occurred and thus it is often necessary to make the
15 determination based on circumstantial evidence. (*Bradford, supra*, 796 F.2d at p. 307; *Tenzer v.*
16 *Superscope, Inc.* (1985) 39 Cal.3d 18, 30; see Audit Manual § 0509.25.) Where there is a substantial
17 deficiency that cannot be explained satisfactorily as being due to an honest mistake or to negligence
18 and where the only reasonable explanation is a willful attempt to evade the payment of tax, the penalty
19 for fraud or intent to evade the tax applies. The size of the deficiency in relation to the tax reported
20 should be taken into account, and the indication that a deficiency is due to intent to evade increases in
21 direct proportion to the ratio of the understatement, when it cannot otherwise be satisfactorily
22 explained. Certain facts or actions are by nature evidence of a deliberate attempt to evade the payment
23 of tax, including falsified records and failure to follow the requirements of the law, the knowledge of
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26 ⁵ Although the Audit Manual was issued for the Sales and Use Tax Department, for purposes of consistent tax
administration, the Board applies the same standard in Cigarette and Tobacco Products Tax cases.

27 ⁶ Although this is a Sales and Use Tax Regulation, for purposes of consistent tax administration, the Board applies the same
standard in Cigarette and Tobacco Products Tax cases.
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1 which is evidenced by permits or licenses held by a taxpayer in prior periods. (*Bradford, supra*, 796
2 F.2d at p. 307; see Audit Manual §§ 0509.20, 0509.25.)

3 ANALYSIS AND DISPOSITION

4 Here, taxpayer purchased \$348 of cigarette tax stamps and filed monthly cigarette distributor's
5 tax reports for the period May 2001, through August 2001. This is direct evidence that taxpayer was
6 aware of the requirements of the Cigarette and Tobacco Products Tax Law. Also, informational
7 pamphlets were found at taxpayer's residence, which is further evidence that taxpayer knew of his
8 responsibilities as a licensed cigarette distributor. In addition, a sign which states in pertinent part
9 "[u]nstamped cigarettes are for distributor's only" was posted on the wall of Royal Cigar, which is
10 further evidence that taxpayer was aware of the requirements of the Cigarette and Tobacco Products
11 Law. Therefore, we conclude that taxpayer had knowledge of the requirements of the Cigarette and
12 Tobacco Products Tax Law.

13 Next, with regard to taxpayer's intent, we note that ISOD seized counterfeit cigarette tax
14 stamps from taxpayer's residence. Possession of counterfeit cigarette tax stamps, whose sole purpose
15 is to falsely represent to subsequent purchasers that tax has been paid by the distributor, is a clear
16 indication that taxpayer intended to evade the payment of tax. Further, ISOD found a counterfeit
17 cigarette distributor's license at Royal Cigar. We can think of no reasonable explanation why taxpayer
18 would have a counterfeit cigarette distributor's license except that he intended to use it to purchase
19 untaxed cigarettes from out-of-state suppliers in order to evade the payment of tax, as evidenced by
20 taxpayer's purchase of 17,081,000 untaxed cigarettes and the fact that taxpayer's suppliers confirmed
21 that taxpayer issued the counterfeit license to them in order to purchase untaxed cigarettes. Also, on
22 October 1, 2002, ISOD seized 39 cartons and nine packs of unstamped cigarettes from Gilmar manor
23 which were stamped with Royal Cigar's name and address. Taxpayer's unreported distribution of
24 unstamped cigarettes is another indication of his intent to evade the payment of tax. In addition,
25 taxpayer failed to report \$743,023.50 tax with respect to his cigarette distributions, which constitutes a
26 2,136.13 percent reporting error rate ($\$743,371.50 / \348). We find such a considerably high reporting
27 error rate cannot be explained by honest mistake or mere negligence, but rather, constitutes strong
28 evidence of taxpayer's intent to evade the payment of tax. Based on the forgoing, we find the evidence

1 to be clear and convincing that petitioner intended to evade the payment of tax for the liability period,
2 and therefore the 25-percent penalty for fraud or intent to evade is properly applied here.

3 LEGAL ISSUE 3

4 Whether taxpayer is entitled to relief from the failure-to-file and finality penalties imposed by
5 ISOD.

6 FINDINGS OF FACT AND RELATED CONTENTIONS

7 ISOD imposed a failure-to-file penalty of \$59,207.85 on taxpayer for failing to file monthly
8 cigarette distributor's tax reports for January 2001 through March 2001, and September 2001 through
9 May 2003. Also, taxpayer did not pay or petition the NOD within 30 days. As a result, the NOD
10 became final and a finality penalty of \$74,302.35 was imposed under Revenue and Taxation Code
11 section 30264. By letter dated March 3, 2015, taxpayer submitted a statement signed under penalty of
12 perjury requesting relief of these penalties, in which he contends that he was not the owner of Royal
13 Cigar.

14 APPLICABLE LAW

15 Revenue and Taxation Code section 30282, subdivision (b), provides that failure-to-file and
16 finality penalties may be relieved if the Board finds that a person's failure to make a timely return, or
17 timely pay or petition a determination, was due to reasonable cause and circumstances beyond the
18 person's control and occurred notwithstanding the exercise of ordinary care and in the absence of
19 willful neglect. A person seeking relief must submit a statement signed under penalty of perjury
20 setting forth the facts on which it bases its claim for relief. (Rev. & Tax. Code § 30282, subd. (b).)

21 ANALYSIS AND DISPOSITION

22 As we find above, taxpayer owned Royal Cigar. Thus, as a sole proprietor, he is liable for the
23 penalties at issue. Taxpayer has not offered any other evidence or contention that his failures to timely
24 make a return, or to timely pay the determination, was due to reasonable cause and circumstances
25 outside of his control. Therefore, we find that taxpayer is not entitled to relief from the failure-to-file
26 or finality penalty.

27 LEGAL ISSUE 4

1 Whether the Collection Cost Recovery Fee (CCRF) of \$950 imposed on taxpayer should be
2 relieved.

3 FINDINGS OF FACT AND RELATED CONTENTIONS

4 On August 25, 2011, ISOD imposed a \$925 CCRF on taxpayer because of his failure to pay, or
5 to timely enter into an installment payment plan to pay, the liability asserted against him in a May 12,
6 2011 demand notice, which advised taxpayer that failure to pay the liability within 90 days would
7 result in the assessment of a collection fee. (Rev. & Tax. Code, § 30354.7, subd. (a).) By letter dated
8 March 3, 2015, taxpayer submitted a statement signed under penalty of perjury requesting relief of the
9 CCRF, in which he contends that he was not the owner of Royal Cigar.

10 APPLICABLE LAW

11 A CCRF must be imposed on any person that fails to pay an amount of tax, interest, penalty, or
12 other amount due and payable under the Cigarette and Tobacco Products Tax Law. (Rev. & Tax.
13 Code, § 30354.7, subd. (a).) The CCRF is to be imposed only if the Board has mailed a demand notice
14 to the person for payment that advises that continued failure to pay the amount due may result in
15 collection action, including the imposition of a CCRF. (*Ibid.*) The Board must relieve a person of the
16 CCRF if the Board finds that the person's failure to pay any amount of tax, interest, penalty, or other
17 amount due and payable is due to reasonable cause and circumstances beyond the person's control, and
18 occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect. (Rev. &
19 Tax. Code, § 30354.7, subd. (d)(1).) Any person seeking to be relieved of a CCRF must file with the
20 Board a statement signed under penalty of perjury setting forth the facts upon which the person bases
21 the claim for relief. (*Id.* at subd. (d)(2).) Taxpayer has requested relief of the CCRF on the basis that
22 he was not the owner of Royal Cigar.

23 ANALYSIS AND DISPOSITION

24 We find above that taxpayer owned Royal Cigar. Thus, as a sole proprietor, he is liable
25 for the CCRF at issue. Taxpayer has not provided any contentions or evidence that his failure to pay
26 the determination or enter into an installment payment was due to reasonable cause and circumstances
27 beyond his control. Therefore, we find that taxpayer is not entitled to relief of the CCRF.
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ORDER

Pursuant to the analysis of the law and facts above, the Board ordered that the determined tax and penalties be redetermined without further adjustment.

Adopted at Culver City, California, on November 29, 2016.

Fiona Ma _____, Chairwoman

George Runner _____, Member

Jerome E. Horton _____, Member

Diane L. Harkey _____, Member

Yvette Stowers _____, Member*

*For Controller Betty T. Yee, pursuant to Government Code section 7.9.