

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for Redetermination)
 4 Under the Sales and Use Tax Law) Account Number SR KHM 99-129727
 4 And the California Tire Fee Law of:) Case ID 534168
 5)
 5 NATHAN R. DUTY, dba Performance Specialty) Account Number RB ER 45-109227
 6) Case ID 559940
 6 Petitioner)
 7) Orland, Glenn County

8 Type of Business: Sales of recreational and utility trailers

9 Audit periods: 10/01/06 – 09/30/09 (Case ID 534168)
 10 01/01/02 – 12/31/09 (Case ID 559940)

11 <u>Item</u>	<u>Disputed Amount</u>	
12 Difference between recorded and reported taxable sales	\$ 56,492 ¹	(Case ID 534168)
12 Disallowed claimed sales in interstate commerce	\$ 184,133	(Case ID 534168)
13 Unreported California tire fee	\$ 10,618	(Case ID 559940)
14 Relief of interest	Unstated	
15 Tax as determined (Case ID 534168)	\$21,328.07	
15 Post-D&R adjustment	<u>- 3,877.41</u>	
16 Balance, protested	<u>\$17,450.66</u>	
16 Interest through 04/30/14	<u>8,433.58</u>	
17 Total tax and interest	\$25,884.24	
17 Payments	<u>- 1,133.43</u>	
18 Balance Due	<u>\$24,750.81</u>	
19 Monthly interest beginning 05/01/14	<u>\$ 81.59</u>	

20	<u>Fee</u>	<u>Penalty</u>
21 As determined (Case ID 559940)	\$10,618.50	\$1,061.85
21 Post-D&R adjustment	<u>00.00</u>	<u>- 1,061.85</u>
22 Proposed redetermination, protested	\$10,618.50	<u>00.00</u>
22 Interest through 05/15/14	<u>6,811.35²</u>	
23 Total tax and interest	<u>\$17,429.85</u>	
24 Monthly interest beginning 05/16/14	<u>\$ 53.09</u>	

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 27 ¹ Although petitioner has disputed the entire Notice of Determination issued under seller's permit number SR KHM
 99-129727, he has raised no specific contentions about this audit item, and the D&R does not show it as a disputed item.
 However, we have addressed the item herein under Issue 2.

28 ² The interest of \$6,811.35 is net of an adjustment for relief of interest of \$495.52 (recommended in the SD&R).

1 This matter was scheduled for Board hearing in August 2013, but was deferred at the request of
2 the Sales and Use Tax Department (Department) for additional investigation. No adjustments were
3 recommended as a result of that investigation. However, in its preparation of this matter for the Board
4 hearing, the Department recommended that the claimed partial exemption for farm equipment be
5 allowed. Accordingly, we have deleted the disallowed claimed partial exemption from the
6 presentation of “Unresolved Issues,” and we have addressed this matter under “Resolved Issues.”

7 UNRESOLVED ISSUES

8 **Issue 1:** Whether adjustments are warranted to the disallowed claimed exempt sales in
9 interstate commerce. We find no adjustment is warranted.

10 Petitioner has sold recreational and utility trailers since September 1992. During the audit
11 period, petitioner claimed sales of trailers to customers residing outside California as exempt sales in
12 interstate commerce on his sales and use tax returns. Petitioner has confirmed that the purchasers took
13 possession of the trailers at his California location, and he did not make any deliveries out-of-state.

14 The Department found that all of the sales petitioner had claimed as exempt sales in interstate
15 commerce were in fact subject to sales tax. Petitioner contends he should not be held responsible for
16 the tax on the disallowed claimed exempt sales because he honestly believed the sales were not subject
17 to tax. Petitioner asserts that the Department should have provided direct information to him
18 specifying which sales qualify as exempt sales in interstate commerce.

19 Petitioner concedes that, for all of the sales in question, the items sold were delivered to the
20 purchasers in California. Therefore, the sales were subject to sales tax. There is no provision in the
21 Sales and Use Tax Law that provides relief on the basis that the retailer was unaware of the proper
22 application of the tax. Accordingly, we find no adjustment is warranted.

23 **Issue 2:** Whether adjustments are warranted to the audited difference between recorded and
24 reported taxable sales. We find no adjustment is warranted.

25 Although petitioner disputed the entire Notice of Determination (NOD), he has raised no
26 specific contentions regarding the audited difference between recorded and reported taxable sales. To
27 establish the amount of this difference, the Department compiled taxable sales from petitioner’s sales
28 invoices and compared the total to reported taxable sales.

1 Petitioner has not provided evidence, or even argued, that the amount of recorded taxable sales,
2 compiled from sales invoices, was incorrect. The only contention petitioner has raised that potentially
3 could relate to this audit item is that he does not have the funds to pay for any portion of the
4 determined liability. There is no basis for relief from tax on the basis of the retailer's inability to pay.
5 In the absence of evidence that the recorded amount of taxable sales compiled by the Department is
6 incorrect, we find no adjustment is warranted.

7 **Issue 3:** Whether petitioner is liable for the California tire fee for the audit period. We find
8 petitioner is liable for the fee.

9 Petitioner does not sell tires other than the tires that come attached to the trailers. Although
10 petitioner obtained a seller's permit in September 1992, he did not register with the Board for a
11 California tire fee account.

12 The Environmental Fees Division of the Property and Special Taxes Department
13 (Environmental Fees Division) found that, during the audit period, petitioner sold 8,040 new tires,
14 which yields a total tire fee of \$10,846.50, which was reduced by the reimbursement to petitioner of
15 \$228 to establish a net tire fee of \$10,618.50. Petitioner contends that he should not be held liable for
16 the tire fee because he was not properly informed that the fee applied to the sale of tires on trailers.

17 It is undisputed that petitioner sold trailers and that each trailer was equipped with at least two
18 new tires, or more depending on the number of axles. Accordingly, petitioner was required to collect a
19 tire fee from his customers and remit that fee to the Board. Thus, we find petitioner is liable for the
20 determined tire fees. As noted previously regarding the sales and use tax law, there is no provision for
21 relief of the California tire fee on the basis that the seller of tires was unaware of the proper application
22 of the fee, and we find no adjustment is warranted.

23 **Issue 4:** Whether relief of interest is warranted. We find no further relief is warranted.

24 Petitioner has requested relief of interest on the basis that he should have been provided more
25 complete information regarding the application of the sales and use tax and the California tire fee. He
26 asserts that the failure to provide such information represents an unreasonable error by Board staff.
27 Also, with respect to the California tire fee, petitioner claims that the auditor who conducted the sales
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1 and use tax audit made an unreasonable error when he did not inform petitioner that he was liable for
2 the California tire fee.

3 In the Supplemental D&R, we find that the Department should have mentioned the tire fee to
4 petitioner and should have noted in the audit report dated March 30, 2010, that petitioner sold new
5 tires. The Environmental Fees Division has computed interest of \$495.52 for the period June 16, 2010
6 (approximately 30 days after the issuance of the NOD for the sales and use tax audit liability) through
7 February 15, 2011 (approximately 30 days after the issuance of the NOD for tire fees).

8 We find that the Department's failure to address the tire fee in its sales and use tax audit was an
9 unreasonable error or delay by the Department. Therefore, we find that relief is warranted of the
10 interest that accrued from June 16, 2010, through February 15, 2011, and we have recommended a
11 reduction of interest of \$495.52. We find there was no unreasonable error or delay on behalf of an
12 employee of the Board before the sales and use tax audit was conducted or after the audit related to tire
13 fees was conducted. Accordingly, we find no further relief of interest is warranted.

14 **RESOLVED ISSUES**

15 In its audit, the Department found that the claimed partial exemptions for sales of farm
16 equipment were not valid because the trailers did not qualify as farm equipment pursuant to California
17 Code of Regulations, title 18, section (Regulation) 1533.1. The Department also noted that the trailers
18 were not registered with "Special Equipment" license plates, which are reserved for vehicles used as
19 implements of husbandry, which are restricted to incidental use on California highways. Therefore,
20 the Department disallowed the claimed partial exemptions. Also, in its post-D&R investigation, the
21 Department noted that petitioner no longer had the exemption certificates available for review.
22 Further, during that investigation, the Department received information from the purchasers that 9 of
23 the 21 utility trailers at issue were not purchased for use exclusively in agricultural operations.

24 However, in its preparation of this matter for the Board hearing, the Department reversed its
25 position, finding that the claimed partial exemptions for sales of farm equipment should be accepted as
26 valid because petitioner accepted the exemption certificates in good faith. That adjustment has been
27 made and is reflected in the table of amounts due, above.

