

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
SEYEDNASROLLAH MIRGHAFOURI,) Account Number SR EA 99-539371
dba Bank Repo Autos) Case ID 574269
Petitioner) Fullerton, Orange County

Type of Business: Used car dealer
Audit period: 10/01/06 – 09/30/09

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$542,748
Disallowed sales in interstate commerce	\$109,085
Tax as determined	\$132,970.74
Pre-D&R adjustment	- 47,102.15
Post-D&R adjustment	<u>- 9,776.24</u>
Proposed redetermination	\$76,092.35
Less concurred	<u>- 22,937.87</u>
Balance, protested	<u>\$53,154.48</u>
Proposed tax redetermination	\$ 76,092.35
Interest through 06/30/14	<u>31,630.19</u>
Total tax, and interest	\$107,722.54
Payments	<u>- 3,841.00</u>
Balance	<u>\$103,881.54</u>
Monthly interest beginning 07/01/14	<u>\$ 361.26</u>

This matter was scheduled for Board hearing in February 2014, but petitioner did not respond to the Notice of Hearing. The matter was scheduled for decision on the nonappearance calendar in March 2014, but petitioner contacted the Board Proceedings Division and the matter was rescheduled for the next Board hearing in Culver City.

UNRESOLVED ISSUES

Issue 1: Whether a reduction to the amount of unreported taxable sales is warranted. We conclude that no reduction is warranted.

1 Petitioner sold used vehicles from July 1994 until August 31, 2011, when petitioner sold his
2 business. For audit, petitioner provided sales journals, profit and loss statements, Report of Sales
3 (ROS) forms, federal income tax returns for 2006, 2007 and 2008, sales and use tax returns, shipping
4 documents, and dealer jackets. The Sales and Use Tax Department (Department) found that petitioner
5 could not account for 55 of the ROS forms issued to him by the Department of Motor Vehicles
6 (DMV). Based on its experience auditing other used vehicle dealers, the Department estimated that 11
7 of the 55 missing ROS forms did not represent unrecorded sales of vehicles because petitioner likely
8 lost, discarded, or voided the forms, but 44 missing forms represented 44 unrecorded sales. Based on
9 petitioner's records of his sales in August 2009, the Department computed an average selling price per
10 vehicle, which it multiplied by 44 to establish unreported taxable sales of \$542,748 based on missing
11 ROS forms for the audit period.

12 Petitioner contends that the missing ROS forms do not represent sales of vehicles, but instead,
13 the forms are missing because they were either destroyed by fire or lost during a move. Further,
14 petitioner asserts that, if the ROS forms were used to make retail sales of vehicles, the Department
15 should be able to obtain the sales information from the DMV using the ROS form number.

16 Petitioner has not provided any documentary evidence to establish that there was a fire at the
17 location where his records were stored, or that he moved. We reject petitioner's assertion that the
18 Department should be able to obtain sales information from the DMV because it is our understanding
19 that the DMV does not keep a record of the ROS number for each sale. In the absence of sufficient
20 documentation to support an adjustment, we find that no reduction to the amount of unreported taxable
21 sales is warranted.

22 **Issue 2:** Whether additional adjustments to the amount of disallowed claimed exempt sales in
23 interstate commerce are warranted. We conclude that no additional adjustments are warranted.

24 The Department found that petitioner failed to provide sufficient documentation to support 15
25 claimed exempt sales in interstate commerce totaling \$235,230. However, at the appeals conference,
26 petitioner provided documentation related to 13 of the 15 disallowed claimed exempt sales. The
27 Department examined the documentation and concluded that the evidence was sufficient to support an
28 adjustment for six of the disallowed claimed exempt sales. Accordingly, in a post-conference reaudit,

1 the Department reduced the disallowed claimed exempt sales in interstate commerce by \$126,145,
2 from \$235,230 to \$109,085. After subtracting the two sales totaling \$19,995 for which petitioner
3 provided no documentation at the appeals conference, the seven remaining disallowed claimed exempt
4 sales in interstate commerce total \$89,090.

5 Petitioner contends that the Department disallowed his claimed exempt sales to customers who
6 did not reside in California, and who registered the vehicles outside of California. Petitioner argues
7 that the out-of-state registrations are sufficient to show that his customers purchased those vehicles for
8 use in another state, and the sales are not subject to tax.

9 We note that, both prior to and after the appeals conference, the Department made adjustments
10 and concessions that were favorable to petitioner, even in the absence of sufficient documentation to
11 support the adjustments. Specifically, when petitioner sold a vehicle to a purchaser in California, and
12 the purchaser subsequently registered that vehicle in a state other than California, the Department
13 considered the sale to be an exempt sale in interstate and foreign commerce. Since we normally would
14 expect sales in interstate and foreign commerce to be supported by bills of lading or other shipping
15 documents showing that the vehicles were shipped out of state, we find that the Department's
16 acceptance of sales as exempt based solely on out-of-state registration does not meet the normal
17 standards of proof for exempt sales in interstate and foreign commerce. Therefore, we have accepted
18 the adjustments and concessions made by the Department with reservation. Based on our conclusion
19 that the documentary evidence does not establish that any of the vehicles remaining in dispute were
20 irrevocably committed to the exportation process upon petitioner's delivery of the vehicles, or that title
21 to any of these vehicles passed to the purchasers outside of California, we find that the evidence is not
22 sufficient to warrant any further adjustments.

23 OTHER MATTERS

24 None.

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27 Summary prepared by Lisa Burke, Business Taxes Specialist III
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