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CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION PETITION FOR REHEARING SUMMARY

9 In the Matter of the Petition for Redetermination)
10 Under the Sales and Use Tax Law of:)
11 Y & S ENTERPRISES, Inc., dba) Account Number: SR Y EA 14-775127
12 Y & S Auto Body Shop) Case ID 492513
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Petitioner _____ San Pedro, Los Angeles County

9 Type of Business: Auto body shop

10 Audit period: 10/01/04 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>		
Understatement of reported taxable sales	\$2,643,537		
Negligence penalty	\$ 28,269		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$386,086.64	\$38,608.70
Post-Board hearing adjustment		- 103,396.03	-10,339.59
Proposed redetermination		<u>\$282,690.61</u>	<u>\$28,269.11</u>
Less concurred		- 64,598.75	00.00
Balance, protested		<u>\$218,091.86</u>	<u>\$28,269.11</u>
Proposed tax redetermination		\$282,690.61	
Interest through 12/31/14		165,709.77	
Negligence penalty		<u>28,269.11</u>	
Total tax, interest, and penalty		\$476,669.49	
Payments		- 39,350.05	
Balance Due		<u>\$437,319.44</u>	

22 Monthly interest beginning 01/01/15 \$ 1,216.70

23 The Board heard this matter on October 30, 2013, granting petitioner 30 days to provide
24 additional records and the Sales and Use Tax Department (Department) 30 days to reply. The matter
25 was scheduled for consideration on the non-appearance calendar for April 2014, but was deferred to
26 allow time for the Department to conduct additional investigation. The matter was then presented to
27 the Board on the non-appearance calendar on September 23, 2014. The Board ordered a reduction in
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1 the measure of tax of \$1,253,285, from \$4,679,837 to \$3,426,552, and a corresponding reduction to the
2 negligence penalty. Petitioner filed a timely petition for rehearing.

3 UNRESOLVED ISSUE

4 **Issue:** Whether the petition for rehearing should be granted. We recommend that it be denied.

5 The disputed issue is the application of a percentage of error, computed using the available
6 sales and use tax return worksheets, to amounts reported for periods prior to October 1, 2006, for
7 which worksheets were not provided. In the audit, the Department established two separate
8 percentages of error, 41.68 percent of error that resulted from computational errors in the sales tax
9 return worksheets, and 27.61 percent of error that resulted from amounts being posted incorrectly on
10 the worksheets, based on the cost of auto parts rather than their selling price. In the post-hearing
11 investigation, petitioner provided evidence to show that the posting errors did not occur in periods
12 prior to October 1, 2006, when the records were maintained by its former controller, who passed away
13 in late 2006. Accordingly, the Department concluded that the 27.61 percent of error should not be
14 applied to amounts reported prior to October 1, 2006. We concurred, and we recommended that
15 adjustment, which the Board ordered on September 23, 2014.

16 In the petition for rehearing, petitioner alleges that the Department refused to review the “Cost
17 Column Error” because the auditor asserted she was not directed to look at that portion of the audited
18 understatement. Petitioner’s description of the post-hearing adjustment is simply incorrect. The
19 Department did review both elements of the understatement, and, as previously stated, the Department
20 found that the posting errors did not occur in periods prior to October 2006. Thus, the Department
21 conceded the issue that petitioner alleges the Department refused to review.

22 Petitioner also asserts the Department found the “totaling error” had not occurred in periods
23 prior to October 1, 2006. Again this is incorrect. Instead, with respect to the 41.68 percent of error
24 related to computation errors, the Department found the documentation petitioner provided to support
25 adjustments to be unreliable for various reasons (i.e., on the allegedly corrected reports, there were
26 significant unexplained gaps in the sequential repair order numbers, there were significant
27 discrepancies between the sales shown on the “corrected” reports and the amounts reported for income
28 tax purposes, and the amounts of sales on the “corrected” reports were lower than the cost of goods

1 sold reported on the income tax return). Accordingly, the Department recommended no adjustment to
2 the 41.68 percent of error, and we concurred.

3 Thus, the Department did review both elements of the understatement, and did consider
4 whether adjustments were warranted to either the 41.68 percent of error or the 27.61 percent of error.
5 The petition for rehearing incorrectly describes the post-hearing investigation and the conclusions
6 therefrom. Further, petitioner has provided no new arguments or evidence with its petition for
7 rehearing. We conclude that the Board correctly decided this matter, and petitioner has not presented a
8 basis for rehearing. We thus recommend that the petition for rehearing be denied.

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10 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

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