

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 DASTIGIR G. OMAR,) Account Number SR Y EH 97-873189
 6 dba Metro Used Car's) Case ID 609881
 6 Petitioner) Bloomington, San Bernardino County

7 Type of Business: Used car dealer

8 Audit period: 01/01/09 - 02/28/11

9 Item Disputed Amount

10 Unreported taxable sales \$513,127
 11 Negligence penalty \$4,490

	<u>Tax</u>	<u>Penalty</u>
12 As determined	\$106,041.65	\$10,604.24
13 Pre-D&R adjustment	- 61,143.07	- 6,114.38
13 Proposed redetermination, protested	<u>\$ 44,898.58</u>	<u>\$ 4,489.86</u>
14 Proposed tax redetermination	\$44,898.58	
15 Interest through 3/31/15	11,446.51	
15 Negligence penalty	<u>4,489.86</u>	
16 Total, tax, interest and penalty	<u>\$60,834.95</u>	
17 Monthly interest beginning 4/1/15	<u>\$ 224.49</u>	

18 This matter was scheduled for Board hearing in June 2014, but was postponed at petitioner's
 19 request for additional time to prepare. It was rescheduled for Board hearing in October 2014, but was
 20 postponed again at petitioner's request due to a scheduling conflict.

21 **UNRESOLVED ISSUES**

22 **Issue 1:** Whether further reductions to the amount of unreported taxable sales are warranted.

23 We conclude that no further reductions are warranted.

24 Petitioner operated a used car dealership with two locations from July 2001 through February
 25 2011, when he discontinued the business. For audit, petitioner initially provided his federal income tax
 26 returns, handwritten sales recaps, and vehicle inventory reports. The Sales and Use Tax Department
 27 (Department) found that the gross receipts reported on petitioner's federal income tax returns
 28 substantially exceeded the total sales reported on his sales and use tax returns. Given this discrepancy

1 and the lack of records provided, the Department estimated audited taxable sales. Petitioner then
2 provided copies of Department of Motor Vehicle (DMV) Report of Sale forms and deal jackets, and
3 the Department obtained Consumer Motor Vehicle Recovery (CMVR) Fee reports from the DMV,
4 documenting the number of sales petitioner had reported to the DMV. The Department used the sales
5 contracts from the deal jackets to compile recorded taxable sales of \$5,077,121, and then compared the
6 recorded taxable sales thus computed with petitioner's reported taxable sales. The Department found
7 that petitioner's reported taxable sales exceeded his recorded taxable sales for several quarterly
8 periods, including the first three quarters of 2009. For those quarters, the Department noted that the
9 number of vehicles sold per the CMVR reports exceeded the recorded number of vehicles sold, and
10 concluded that petitioner had not recorded all of his sales. Therefore, the Department accepted the
11 accuracy of petitioner's reported taxable sales for the first three quarters of 2009. For the remaining
12 quarterly periods, the Department accepted the accuracy of the recorded taxable sales. For those
13 quarterly periods in which petitioner's reported taxable sales exceeded his recorded taxable sales, the
14 Department found that the credit differences represented timing differences, which it allowed as offsets
15 against any understatements in other quarterly periods. A comparison of audited taxable sales thus
16 established with petitioner's reported taxable sales showed unreported taxable sales of \$513,127.

17 Petitioner asserts that he intentionally overstated his reported taxable sales to avoid another
18 audit with a deficiency measure, and contends that, since he intentionally overstated his reported
19 taxable sales for the first three quarters of the audit period, the credit differences should be allowed as
20 timing differences. Additionally, petitioner asserts that he intentionally overstated his recorded taxable
21 sales, and thus, audited taxable sales based on his records are overstated.

22 Petitioner provided no documentation or other evidence to support his contention that his
23 recorded and reported taxable sales were intentionally overstated. We find that petitioner's sales
24 records are evidence of his taxable sales. However, we note that petitioner's records did not account
25 for all of the vehicles shown in the CMVR reports, and we conclude that the credit differences in the
26 first three quarters of 2009 were not timing differences, but resulted from unrecorded taxable sales.
27 Furthermore, we note that the gross receipts reported on petitioner's income tax return for 2009
28 substantially exceeded his reported total sales, and find that, while the Department accepted the

1 accuracy of petitioner's reported taxable sales for the first three quarters of 2009, the discrepancy
2 between petitioner's reported amounts indicates that petitioner's reported taxable sales for that year
3 could be understated. Accordingly, we find that no further reductions are warranted.

4 **Issue 2:** Whether petitioner was negligent. We conclude that he was negligent.

5 The Department imposed the negligence penalty because petitioner's records were incomplete,
6 and similar errors were found in petitioner's prior two audits. Petitioner disputes the penalty on the
7 grounds that he overstated his reported taxable sales.

8 A comparison of unreported taxable sales of \$513,127 with reported taxable sales of
9 \$5,197,752 shows an error rate of 9.87 percent, which we find is evidence of negligence in reporting.
10 Further, petitioner failed to provide all of his source documents, such as sales contracts, and deal
11 jackets, which we find is evidence of negligence in recordkeeping, particularly since petitioner had
12 been audited previously and should have been aware of the requirement to provide complete records.
13 In addition, we find that the errors related to unreported taxable sales have continued from the prior
14 audits to the one under consideration here. Given the inadequacy of petitioner's records and the
15 reporting errors, we find that petitioner was negligent and the penalty was properly applied.

16 **OTHER MATTERS**

17 None.

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19 Summary prepared by Lisa Burke, Business Taxes Specialist III
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