STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of: ELITE CERTIFIED AUTO SERVICE & TIRES, INC., dba Elite Auto Service & Tires Inc. Petitioner	Account Number SR EA 100-043894 Case ID 550595 La Habra, Orange County

Type of Business: Tire dealer and auto repair shop

Audit period: 07/01/06 – 06/30/09

Item	Disputed Amount	
Unreported taxable sales	$293,190	
Disallowed sales for resale	$ 90,510	
Unreported cost of self-consumed supplies	$ 9,000	
Tax as determined		$34,105.88
Post-Board hearing adjustment		- 2,554.06
Proposed tax redetermination, protested		$31,551.82
Interest through 02/28/15		14,695.86
Total tax and interest		$46,247.68
Monthly interest beginning 03/01/15		$ 157.76

The Board held a hearing regarding this matter on July 26, 2012, and granted petitioner 30 days to provide additional records and the Sales and Use Tax Department (Department) 30 days to respond. The Board also suggested that the Department contact Goodyear Corporation to obtain sales information to be used to establish audited taxable sales. This matter was scheduled for the nonappearance calendar in December 2013, but was postponed at petitioner's request for an opportunity to make a public comment at a meeting in Culver City.

Originally, the Department did not receive either additional records from petitioner or a reply from Goodyear Corporation, and it issued a memorandum dated September 28, 2012, recommending no adjustments. Subsequently, Goodyear Corporation provided sales information for the period January 1, 2007, through June 30, 2009, and the Department used that information to establish an adjustment in the overall understatement of reported taxable measure of $33,495, from $426,195 to $392,700, which it set forth in a memorandum dated March 13, 2013. The Appeals Division requested

clarification of the procedures used to establish the understatement of $392,700, and the Department responded in a memorandum dated July 19, 2013. Subsequently, petitioner contacted the Appeals Division, adamantly asserting that it had a box of records that had been disregarded by the Department. The Department contacted both petitioner and its representative and found that neither party had any additional documentation to present.[1] Accordingly, we recommend that the audited understatement of reported taxable measure be reduced to $392,700, as explained under Post Hearing Developments. This matter was rescheduled on the nonappearance calendar in February 2014, but was postponed for settlement consideration. It was then rescheduled in November 2014 but was deferred, on the day of the Board meeting, to be rescheduled at the Culver City location.

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the unreported taxable sales. We find no adjustment is warranted other than the adjustment explained under Post Hearing Developments.

Petitioner operates a Goodyear tire dealership and an auto repair shop. It prepared sales and use tax returns based on the total of its sales invoices, less estimated amounts of nontaxable sales for resale, nontaxable repair labor, and cash discounts. Petitioner provided incomplete records for audit.

The Department established total sales based on its analysis of petitioner's three business bank accounts. It compiled total deposits of $5,117,449, which it reduced by the documented amounts of transfers, deposits of funds from sources other than sales, and dishonored checks, to establish audited total sales of $3,769,911. The Department then segregated the invoices for March 2009 into the various sales categories, and it computed that taxable sales represented 49.40 percent of total sales for the test month. The Department applied 49.40 percent to audited total sales to establish taxable sales of $1,862,336, which exceeded reported amounts of $1,445,141, by $417,195. Petitioner contends the audited understatement is excessive because additional adjustments should be made for refunds and loans included in the bank deposits and for additional nontaxable sales for resale.

[1] Petitioner disputes the Department's representation of the conduct of this additional investigation, which we address below in "Other Matters."

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The Department has used a Board-approved audit method, which we find appropriate in this case. The Department has made adjustments to audited total sales for all documented deposits of funds from sources other than sales and has considered all substantiated nontaxable sales for resale in its computation of the percentage of taxable to total sales. Accordingly, we find no adjustment is warranted other than the adjustment described under Post Hearing Developments.

Issue 2: Whether adjustments are warranted to the unreported cost of self-consumed supplies. We find no adjustment is warranted.

The Department noted that petitioner had not reported the cost of any supplies subject to use tax. During the audit, petitioner estimated that the cost of self-consumed supplies averaged $250 per month. Since petitioner provided no invoices or other documentation that it had paid tax or reimbursement to vendors on its purchases of shop supplies, and the Department concluded that shop supplies were purchased ex-tax. The Department used petitioner's estimate to establish the audited cost of self-consumed shop supplies subject to use tax of $9,000 ($250 x 36). Petitioner contends that it paid sales tax reimbursement to local vendors with respect to all of its purchases of shop supplies.

Petitioner has provided no invoices for its purchases of shop supplies. Accordingly, there is no evidence that it paid sales tax reimbursement to vendors or even any evidence of the identity of the vendors. In the complete absence of records regarding those purchases, we find the Department reached a reasonable conclusion that petitioner purchased shop supplies ex-tax and that petitioner's estimate should be used to establish the audited cost of such supplies.

POST HEARING DEVELOPMENTS

As noted above, Goodyear Corporation did eventually provide sales information to the Department for the period January 1, 2007, through June 30, 2009. Using that information, the Department computed a percentage of taxable to total sales of 46.68 percent, rather than the 49.40 percent it had computed in the audit. The Department applied the 46.68 percent to bank deposits and computed taxable sales that exceeded reported taxable sales by $293,190. The Department then reviewed the sales that petitioner had reported to Goodyear Corporation as nontaxable sales, which totaled $110,797. The Department found the evidence sufficient to show that $35,371 of those sales were nontaxable sales for resale. The Department disallowed the remaining $75,426, as well as a

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projected amount of $15,084 for the last two quarters of 2006 (a total of $90,510). After these adjustments, the total understatement of reported taxable measure was reduced from $426,195 to $392,700 ($293,190 understatement of taxable sales reported by petitioner to Goodyear + $90,510 overstatement of nontaxable sales reported by petitioner to Goodyear, + $9,000 unreported cost of self-consumed supplies). In the absence of evidence, we recommend no further adjustment.

OTHER MATTERS

As noted above, I spoke with petitioner by telephone after the Department's July 19, 2013 memorandum in this matter, and petitioner asserted that it had new, previously unseen evidence from Goodyear, in a box, ready and available for review. Petitioner adamantly asserted that previous auditors had refused to look at any additional evidence, and petitioner stated that the auditors were biased against him or had personality conflicts with him. In order to accommodate petitioner's concerns and to facilitate an objective, fresh look at the (alleged) new evidence, I requested that the Department assign the matter to a different district office than had done the audit and reaudit, and to have a different auditor examine the new evidence. By memorandum dated October 2, 2013, the Department indicated that it had assigned the matter to a different auditor in a different district office, and that the auditor contacted both petitioner and its representative and made several attempts to review any additional evidence, but none was provided.

By undated letter received November 15, 2013, petitioner disputed the Department's representation that petitioner failed to provide any additional records for the Department's review, and petitioner alleges that the Department's auditor asserted that she could not "change the findings of the audit" and that she refused to accept the evidence that petitioner was willing to provide. In addition, petitioner's letter raises contentions regarding: 1) an alleged overpayment of tax based on the Goodyear sales reports; 2) an alleged overpayment based on the Department's bank deposit reconciliation; 3) alleged proof of tax paid on self-consumed shop supply items; and 4) an alleged overpayment of tax based upon refunds issued to customers. In addition, by letter received December 5, 2013, petitioner has raised several objections to our original Final Action Summary issued in this matter, but without any supporting evidence.

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By memorandum dated December 4, 2013, the Department analyzed the most recent contentions and concluded that the evidence did not support petitioner's assertions, and that no additional adjustments were warranted. Based on our review we concur with the Department's position. In addition, in its memorandum the Department confirms that it assigned the matter to a different auditor from another district office, but that petitioner failed to provide any evidence to the new auditor. Also, the Department verified that the auditor did not refuse to accept any additional evidence. The Department affirms that instead, none was provided. Accordingly we have no basis on which to recommend any adjustments other than those noted above in Post Hearing Developments.

Summary prepared by Jeffrey G. Angeja, Tax Counsel IV