

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for)
 4 Redetermination and Claim for Refund)
 Under the Sales and Use Tax Law of:)
 5) Account Number SR Y GH 97-582794
 888-AUTO CORPORATION) Case ID's 414664, 443238
 6)
 7 Petitioner/Claimant) Sunnyvale, Santa Clara County

8 Type of Business: Auto broker and used car dealer

9 Audit period: 04/01/04 – 06/30/07 (443238)

10 Claim period: 01/01/06 – 06/30/07 (414664)

11 <u>Item</u>	<u>Disputed Amount</u>
12 Tax-paid purchases resold	\$1,819,436 (443238)
	\$ 78,665 (414664)
13 Tax as determined and proposed to be redetermined	\$187,379.24
14 Less concurred	- 37,224.24
	<u>\$150,155.00</u>
15 Proposed tax redetermination	\$187,379.24
16 Interest through 05/31/12	<u>70,628.75</u>
Total tax and interest	\$258,007.99
17 Payments	- <u>37,176.10</u>
Balance Due	<u>\$220,831.89</u>
18 Monthly interest beginning 06/01/12	<u>\$ 876.18</u>

19 UNRESOLVED ISSUES

20 **Issue 1:** Whether an adjustment is warranted for tax-paid purchases resold. We find no
 21 adjustment is warranted.

22 Petitioner has operated a used car dealership and acted as an auto broker since January 1977.
 23 During the audit period, petitioner sold new vehicles (mostly Mercedes-Benz) to individuals outside
 24 the United States (mostly residing in China). Beginning in the fourth quarter 2005 (4Q05), Mercedes-
 25 Benz began requiring petitioner to sign an agreement with each purchase of a vehicle that it would not
 26 export the vehicle. In order to continue making these sales and not be restricted by the Mercedes-Benz
 27 requirement, petitioner arranged for employees, family members, and friends to purchase vehicles
 28 from Mercedes-Benz in their own names and then ship the cars to the intended parties in China. Each

1 vehicle was registered in the purchaser's name, not petitioner's, and the purchaser paid all applicable
2 taxes and fees, including sales tax reimbursement, to the Mercedes-Benz dealership. The purchaser
3 arranged for the vehicle to be picked up by common carrier, transported from the dealership, and
4 exported to China. According to petitioner, the ownership remained in the name of the purchaser at
5 the time of export. Petitioner's only involvement in these transactions was to provide funds to make
6 the purchase and to cover all taxes and fees, usually by cashier's check payable to the purchaser.

7 Petitioner claimed the sales to individuals in China as nontaxable sales for resale or exempt
8 sales in interstate commerce and claimed a tax-paid purchases resold deduction for the cost of each
9 vehicle (which had been paid by the employee, family member, or friend who actually made the
10 purchase). The Sales and Use Tax Department (Department) found that no adjustment was warranted
11 for tax-paid purchases resold. Petitioner contends that its recorded adjustments should be allowed.
12 Specifically, petitioner argues that the audited understatement should be reduced by tax-paid purchases
13 resold of \$1,819,436, and requests a refund of tax paid on an additional amount of tax-paid purchases
14 of \$78,665.

15 Petitioner was not the purchaser of any of the vehicles for which it seeks a tax-paid purchases
16 resold deduction, did not pay sales tax reimbursement to the car dealerships, and not sell the vehicles.
17 Indeed, petitioner never held title to any of the subject vehicles. Accordingly, we find that no
18 adjustment is warranted to the audited understatement, and the claim for refund should be denied.

19 **Issue 2:** Whether relief is warranted on the basis that petitioner's failure to pay the tax was the
20 result of its reliance on incorrect advice received during a prior audit. We find relief is not warranted.

21 The audit at issue here was petitioner's third audit and, in the most recent prior audit for the
22 period October 1, 2000, through September 30, 2003, the Department found that petitioner's reported
23 amounts were substantially correct. However, during the prior audit period, petitioner was the actual
24 purchaser of the vehicles, was the person actually paying sales tax reimbursement on its own behalf to
25 the dealers, and was the person actually reselling the vehicles. Accordingly, tax-paid purchases resold
26 deductions were allowable against petitioner's California tax liability. There is no dispute that,
27 despite petitioner's argument in favor of relief that its business practices have not changed, petitioner's
28 business practices did, *in fact*, change. Without regard to whether petitioner deems the change to be

1 significant, petitioner concedes that, beginning in 4Q05, the vehicles were purchased by employees,
2 family, or friends, instead of being purchased by petitioner, and that those other individuals retained
3 ownership until the resale in China. Petitioner asserts that, since it supplied the money for the
4 purchases, the nature of the transactions remained the same. However, regardless of petitioner's view
5 of the significance of the change, there is simply no dispute that the transactions at issue here are
6 different than those considered by the Department in the prior audit. Since the facts and conditions
7 related to these transactions did not remain unchanged from the period covered by the prior audit, the
8 prior audit findings do not represent advice upon which petitioner could reasonably rely in determining
9 the correct application of tax. (See Rev. & Tax. Code § 6596 , subd. (a) and Cal. Code Regs., tit. 18,
10 §1705, subd. (c).) We conclude that there is absolutely no basis for relief.

11 **OTHER MATTERS**

12 None.

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