

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest and)
Claim for Refund Under the Sales and)
Use Tax Law of:)
AF SERVICES, LLC) Account Number SR Y AS 100-602532
Taxpayer/Claimant) Case ID's 527382, 577082
Torrance, Los Angeles County

Type of Business: Wholesaler of computer equipment

Audit period: 10/01/05 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed tax-paid purchases resold	\$719,466 ¹
Claim for refund	\$ 91,416
Determined tax	\$64,694.54
Interest	20,252.28
Finality penalty	<u>6,469.45</u>
Total tax, interest, and penalty	\$91,416.27
Payments	<u>-91,416.27</u>
Balance Due	<u>\$ 00.00</u>

UNRESOLVED ISSUE

Issue: Whether taxpayer filed a timely claim for refund. We find taxpayer did not.

Taxpayer was a wholesaler of computer equipment and other electronic devices. Taxpayer resold its merchandise solely to a related corporation, PC Mall, Inc., which sold the items online. The Sales and Use Tax Department (Department) conducted an audit of taxpayer for the period October 1, 2005, through December 31, 2007, and it issued a Notice of Determination on January 7, 2010. Taxpayer did not file a timely petition for redetermination, but it filed an untimely appeal which the Department accepted as an administrative protest on March 17, 2010. In its March 17, 2010 letter, and in correspondence dated February 26, 2010, the Department explained to taxpayer that its legal

¹ Taxpayer disputes the disallowed claimed tax-paid purchases resold of \$719,466, and has not disputed the \$64,710 remaining understatements. However, taxpayer's claim for refund is for its full payment of the audit liability.

1 recourse was to pay the amount due and file a claim for refund within six months from the date of
2 payment.

3 Taxpayer paid the entire liability in full on April 29, 2010, and it filed a claim for refund of the
4 entire amount paid on July 20, 2011. The claim for refund was not timely filed because it was filed
5 more than three years from January 31, 2008 (the due-date of the annual return for the year 2007),
6 more than six months after the date the determination became final (February 6, 2010), and more than
7 six months after the date of the claimed overpayment. (Rev. & Tax. Code, § 6902, subd. (a)(2).) Since
8 the claim for refund was not timely, we recommend that the claim be denied.

9 Had the claim for refund been timely, we would nevertheless have recommended its denial, on
10 the merits. In its administrative protest and other correspondence, taxpayer disputed the Department's
11 disallowance of claimed tax-paid purchases resold (the claim for refund simply states that payment of
12 the audit liability was made under protest). The claimed deductions were made in connection with
13 purchases for which taxpayer paid tax reimbursement to vendors located outside California. (Our
14 understanding is that, if an out-of-state fulfillment center required a product to ship to a customer, an
15 employee would make the purchase from a local retailer and pay the tax or tax reimbursement
16 collected by that retailer on behalf of the foreign state.) Since a tax-paid purchases resold deduction is
17 allowed only when the purchaser has reimbursed its vendor for California sales tax or paid California
18 use tax, taxpayer is not entitled to take a tax-paid purchases resold deduction on the basis that it paid
19 another state's taxes.

20 **OTHER MATTERS**

21 Since taxpayer did not timely pay the determination or file a petition for redetermination, a
22 finality penalty was applied. Although we explained to taxpayer that it could request relief of the
23 finality penalty, and provided a form it could use, it has not done so. Accordingly, we have no basis to
24 consider recommending relief of the finality penalty.

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