

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 AFTERSHOCK POWER BOATS, INC.) Account Number: SR EH 100-235371
 6) Case ID 334423
 7 Petitioner) Murrieta, Riverside County

8 Type of Business: Boat sales
 9 Audit period: 07/01/00 – 06/30/03

10 Item Disputed Amount

11 Unreported sales \$2,170,034
 12 Negligence penalty \$16,993
 13 Amnesty-double negligence penalty \$10,519
 14 Amnesty interest penalty \$11,649

	<u>Tax</u>	<u>Penalty</u>
15 As determined	\$216,764.56	\$35,350.67
16 Adjustment: Sales and Use Tax Department	<u>-46,836.91</u>	<u>-7,839.15</u>
17 Proposed redetermination, protested	<u>\$169,927.65</u>	<u>\$27,511.52</u>
18 Proposed tax redetermination	\$169,927.65	
19 Interest through 10/31/10	118,731.36	
20 10% penalty for negligence	16,992.80	
21 Amnesty-double negligence penalty	10,518.72	
22 Amnesty interest penalty	<u>11,649.41</u>	
23 Total tax, interest, and penalty	\$327,819.94	
24 Payments	<u>-430.49</u>	
25 Balance Due	<u>\$327,389.45</u>	
26 Monthly interest beginning 11/1/10	<u>\$988.73</u>	

27 This matter was scheduled for Board hearing on June 17, 2010, but was postponed because
 28 petitioner's newly retained representative needed additional time to prepare for the Board hearing.

29 **UNRESOLVED ISSUES**

30 **Issue 1:** Whether adjustments are warranted to the audited amount of unreported sales. We
 31 recommend no adjustments.

1 Petitioner operated as a retailer of boats, trailers, and related accessories from February 1, 2000,
2 through March 31, 2008, when the business was discontinued with no known successor. Petitioner did
3 not provide a sales journal or worksheets showing how the amounts reported on the sales and use tax
4 returns were determined. The Sales and Use Tax Department (Department) decided to rely on sales
5 reflected in petitioner's customer files. Petitioner provided documentation that some of those sales
6 were nontaxable sales for resale or exempt sales in interstate commerce, and the Department regarded
7 the remainder as taxable sales. The sale prices were included in some customer files but not in others.
8 When a sale price could not be obtained from the customer file, the Department used an average sale
9 price.¹ In total, the Department compiled taxable sales of boats and trailers of \$4,182,786, of which
10 \$2,737,959 was based on sale prices obtained from the customer files and \$1,444,827 was based on
11 estimated average sale prices. The Department then calculated audited sales of parts, using the second
12 quarter of 2003 (2Q03) as the test period. Based on the numerical sequence of the invoices, the
13 Department concluded that there were six missing invoices. It scheduled the available sales invoices
14 and calculated the average sale price of parts per invoice, which the Department used for the six
15 missing invoices. The Department computed that audited sales of parts for 2Q03 represented 2.8
16 percent of audited boat and trailer sales for that quarter. To establish audited sales of parts for the audit
17 period, the Department applied 2.8 percent to audited amounts of boat and trailer sales. The
18 Department computed audited taxable sales, including boats, trailers, and parts, of \$4,299,903, which it
19 compared to reported taxable sales of \$2,129,869, to compute the understatement of \$2,170,034.

20 Petitioner contends that adjustments are warranted for duplicated sales and sales for which the
21 purchaser reported tax to the California Department of Motor Vehicles (DMV). Petitioner does not
22 contend that any of the sales the Department regarded as taxable were instead nontaxable or exempt.

23 The Department used petitioner's own records to compile audited taxable sales, and petitioner
24 has not identified any sales that were duplicated in the audit, nor have we found any in our review of
25 the audit workpapers. Similarly, petitioner has not provided documentation that any of its customers
26 _____

27 ¹ The Department computed average sale prices for various categories of boats and trailers and then used the average
28 appropriate to the type of sale.

1 paid tax directly to DMV. Further, since petitioner was a dealer of boats and trailers, purchasers would
2 expect petitioner to submit the necessary paperwork to DMV. Consequently, we find it highly unlikely
3 that any of petitioner's customers paid tax to DMV. In the absence of evidence of duplications or tax
4 paid by customers to DMV, we find no basis for adjustment.

5 **Issue 2:** Whether petitioner was negligent. We conclude that it was.

6 The Department imposed the 10-percent negligence penalty because petitioner's records were
7 inadequate for sales and use tax purposes, and the understatement was large in relation to the reported
8 measure of tax. Petitioner disputes the penalty on the grounds that it did the best it could to report
9 accurately.

10 Petitioner did not provide a sales journal or worksheets showing how the amounts reported on
11 the sales and use tax returns were determined. Further, for a substantial number of its sales of boats
12 and trailers, petitioner did not maintain information regarding the amounts of the sales. Moreover, the
13 understatement of \$2,170,034, which represents a percentage of error of 101.9 percent, is substantial,
14 both as an absolute value and in relation to reported amounts. We find that the lack of books and
15 records and the fact that petitioner reported only about half of its taxable sales are evidence that
16 petitioner did not exercise due care in recordkeeping or reporting. Thus, we find petitioner was
17 negligent, and the penalty was properly applied.

18 AMNESTY

19 Petitioner did not apply for amnesty or pay the tax and interest due for the amnesty-eligible
20 period by March 31, 2005. Therefore, since the Notice of Determination was issued after the end of
21 the amnesty period, an amnesty-double negligence penalty of \$10,518.72 has been applied with respect
22 to the negligence penalty imposed for the amnesty-eligible period. In addition, an amnesty interest
23 penalty of \$11,649.41 will be applied when the liability becomes final. Petitioner submitted a
24 statement under penalty of perjury pursuant to Revenue and Taxation Code section 6592, requesting
25 relief from the amnesty penalties on the grounds that it will have trouble paying the audit liability.

26 The Department's records show that a letter explaining the amnesty program was sent to
27 petitioner on January 20, 2005. Also, the Department first informed petitioner of the audit by letter
28 dated September 10, 2003. Due to difficulties in obtaining documentation from petitioner, the audit

1 was not completed until January 27, 2006. However, preliminary audit schedules were faxed to
2 petitioner on August 27, 2004. Thus, petitioner was aware of a substantial understatement of tax for
3 the amnesty-eligible periods but did not file for amnesty or pay any amount of additional tax for those
4 periods during the amnesty period. We note that petitioner continued in business, and thus continued
5 making sales, three years after the amnesty deadline of March 31, 2005. Therefore, we are not
6 convinced that petitioner lacked the funds to comply with the amnesty program. Moreover, an
7 inability to pay does not provide reasonable cause for petitioner's failure to participate in the amnesty
8 program. Consequently, we recommend relief of the amnesty penalties be denied.

9 **OTHER DEVELOPMENTS**

10 None.

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12 Summary prepared by Rey Obligacion, Retired Annuitant
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