

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
AMERICA WOOD FINISHES, INC.) Account Number: SR AA 100-029320
Petitioner) Case ID 460325
Los Angeles, Los Angeles County

Type of Business: Manufacture and sales of paint and related supplies

Audit period: 04/01/03 – 12/31/06

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Negligence penalty	\$13,870		
As determined		\$173,948.74	\$17,394.90
Adjustment – Appeals Division		<u>-35,253.17</u>	<u>-3,525.31</u>
Proposed redetermination		\$138,695.57	<u>\$13,869.59</u>
Less concurred		<u>-138,695.57</u>	
Balance, protested		<u>\$0.00</u>	<u>\$13,869.59</u>
Proposed tax redetermination		\$138,695.57	
Interest through 02/29/12		71,499.73	
Negligence penalty		<u>13,869.59</u>	
Total tax, interest, and penalty		\$224,064.89	
Payments		<u>- 19.00</u>	
Balance Due		<u>\$224,045.89</u>	
Monthly interest beginning 03/01/12		<u>\$ 808.95</u>	

This matter was scheduled for Board hearing in October 2011, but was postponed at petitioner’s request because of a scheduling conflict.

UNRESOLVED ISSUE

Issue: Whether petitioner was negligent. We find that petitioner was negligent.

Petitioner manufactures and sells paint and other wood finishing products. Petitioner claimed all of its sales as non-taxable sales for resale. After adjustments, disallowed claimed sales for resale are \$1,682,617 for the audit period, which equates to an overall error rate of 24.05 percent. Petitioner

1 concedes this understatement. The Department also discovered that petitioner had collected \$2,400 in
2 sales tax reimbursement, which it failed to record.

3 The Department imposed a penalty for negligence because of the high rate of disallowed
4 claimed sales for resale and petitioner's failure to maintain adequate records of the sales tax
5 reimbursement it had collected. Petitioner disputes the penalty, arguing that the failure to report
6 accurately and record the sales tax reimbursement it collected was due to errors by the outside
7 accountant. Further, petitioner argues that the penalty is not warranted because this is its first audit.

8 Petitioner claimed all of its sales as nontaxable sales for resale even though it sold consumable
9 supplies to purchasers it knew were consumers of those goods. Thus, we find petitioner could not have
10 reasonably believed all of its gross receipts were nontaxable, and, in fact the Department found that
11 about 24 percent of petitioner's sales were subject to tax. The magnitude of the error rate for
12 disallowed claimed sales for resale, petitioner's failure to document claimed sales for resale, and its
13 collection of sales tax reimbursement from purchasers on sales which it claimed on its returns as
14 nontaxable sales for resale are further evidence of negligence.

15 We do not find the underreporting here was due to lack of knowledge attributable to the fact
16 that this was petitioner's first audit. Rather, we find petitioner failed to take the steps that a reasonably
17 prudent person would take to accurately report its taxable sales. On this issue, we note particularly that
18 petitioner collected sales tax reimbursement and did not report or pay the tax to the Board, which is
19 clear evidence that the understatement is not related solely to petitioner's lack of knowledge.
20 Regarding petitioner's contention that its outside accountant is to blame, we note that negligence on
21 the part of an outside accountant is imputed to petitioner. Thus, even if the outside accountant's
22 negligence caused the problem, the penalty was properly imposed.

23 **OTHER DEVELOPMENTS**

24 None.

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