

**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: )  
ANDERSEN AUDIO VISUAL-EAST BAY, LLC ) Account Number SR CH 100-311335  
Petitioner ) Case ID 511892  
San Diego, San Diego County

Type of Business: Sales and installation of audio visual equipment

Audit period: 04/01/05 – 03/31/08

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable freight charges	\$488,034
Tax as determined and proposed to be redetermined	\$49,817.53
Less concurred	<u>- 7,114.46</u>
Balance, protested	<u>\$42,703.07</u>
Proposed tax redetermination	\$49,817.53
Interest through 10/31/12	<u>23,905.63</u>
Total tax and interest	\$73,723.16
Payments	<u>- 10,330.95</u>
Balance Due	<u>\$63,392.21</u>
Monthly interest beginning 11/01/12	<u>\$ 197.43</u>

This matter was scheduled for Board hearing in July 2012, but was postponed at petitioner's request due to a scheduling conflict.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner should be relieved from the tax due on freight charges because its failure to report the tax was the result of its reasonable reliance on written advice from the Board. We conclude petitioner is not entitled to relief.

Petitioner has sold and installed audio visual equipment since October 2003. It did not charge sales tax reimbursement or report tax on its charges for freight-in (from vendors to petitioner) or freight-out (from petitioner to customers). The Sales and use Tax Department (Department) concluded that petitioner's separately stated charges on its invoices for freight-in are subject to tax, and that charges for freight-out were taxable to the extent that the amount charged exceeded the actual cost of

1 shipping. Petitioner does not dispute the finding that the freight charges at issue are subject to tax, but  
2 it contends that its failure to report tax on those charges was the result of its reliance on the findings in  
3 an audit of a related company, Anderson Audio Visual-San Diego, Inc. (SR S FH 97-220527).

4 It is undisputed that Anderson Audio Visual-San Diego, Inc., an entity other than petitioner,  
5 received erroneous advice from the Board. It is also undisputed that this entity is related to petitioner,  
6 since the entity and its sole owner own a combined 61 percent of petitioner. However, the related  
7 entity and petitioner are separate persons for purposes of the sales and use tax purposes, and petitioner  
8 is not the related entity's legal or statutory successor. Since Revenue and Taxation Code section 6596,  
9 subdivision (a), limits relief to the person who actually received the written advice from the Board or  
10 that person's legal or statutory successor, petitioner is not entitled to relief under that provision.

11 **OTHER MATTERS**

12 None.

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