

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:)
AKBAR FERDOUSI BAYRAMI,) Account Number: SR CH 21-877599
dba Auto World) Case ID 473205
Petitioner) Richmond, Contra Costa County

Type of Business: Used car dealer
Audit period: 1/1/05 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>		
Difference between recorded vs. reported	\$176,528		
Unreported sales established by markup	\$438,819		
Negligence penalty	\$5,246		
		<u>Tax</u>	<u>Penalty</u>
As determined, protested		<u>\$52,455.31</u>	<u>\$5,245.65</u>
Proposed tax redetermination		\$52,455.31	
Interest through 8/31/11		22,174.23	
Negligence penalty		<u>5,245.65</u>	
Total tax, interest, and penalty		<u>\$79,875.19</u>	
Monthly interest beginning 9/1/11		<u>\$262.28</u>	

A Notice of Appeals Conference was mailed to petitioner's address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering him the opportunity to provide any additional arguments and evidence in writing he wished us to consider, but he did not respond.

UNRESOLVED ISSUES

Issue 1: Whether adjustments to the determined deficiency measure of tax are warranted. We recommend no adjustments.

Upon audit, the Sales and Use Tax Department (Department) found that petitioner collected sales tax reimbursement on each of the 83 sales of vehicles for which he provided sales contracts for

1 the audit period. The measure of those sales recorded in the contracts was \$343,653, but petitioner
2 reported taxable sales of only \$167,125, resulting in a measure of deficiency of \$176,528 for the
3 difference between recorded and reported taxable sales. The Department concluded, however, that the
4 83 sales contracts did not represent all of petitioner's vehicle sales since he had reported substantially
5 more gross receipts than recorded in those contracts on his federal income tax returns for the audit
6 period (\$625,841). Further, the low net incomes petitioner reported on his federal returns caused the
7 Department to question whether the gross receipts reported on those returns were also understated.

8 The Department analyzed the available records and determined that petitioner's checkbook
9 stubs contained a reliable and complete record of petitioner's vehicle purchases. Based on the
10 checkbook stubs and starting at the beginning of the audit period, the Department compiled a list of
11 vehicle purchases that were not included in petitioner's recorded sales, made adjustments for vehicle
12 sales that occurred after the end of the audit period and for vehicles in petitioner's inventory at the end
13 of the audit period, to establish 73 vehicle purchases totaling \$326,258 that were not accounted for in
14 petitioner's recorded sales but which were presumed to have been sold during the audit period.¹ The
15 Department compared the recorded taxable sales of \$331,518 for 81 of the 83 available vehicle sales
16 contracts with total costs of \$246,489 (comprised of the \$209,885 purchase cost of the vehicles plus
17 \$36,604 for the cost of preparing the vehicles for sale, estimated based on 17.44 percent of the
18 purchase price), to compute a 34.50 percent markup. The Department added the 34.50 percent markup
19 to the \$326,258 audited purchases of the 73 unaccounted vehicles to establish audited unrecorded
20 taxable sales of \$438,819 for the audit period. On appeal, petitioner contends that the audited markup
21 percentage is too high, and that the Department failed to take into consideration his nontaxable sales
22 for resale.

23 All of the sales contracts that petitioner provided showed that he had added sales tax
24 reimbursement to the sales prices of all vehicles sold. The sales contracts provided were not sufficient
25
26

27
28 ¹ The Department did not make any adjustment for vehicles purchased prior to the audit period that remained in inventory
at the beginning of the audit period (any such adjustment would have increased the deficiency).

1 to account for all of the vehicle purchases shown in petitioner's checkbook stubs. This is strong
2 evidence that recorded sales were understated, and the Department found that there were at least 73
3 vehicle purchases for which petitioner has not accounted for their disposition. Absent evidence to the
4 contrary, we find it reasonable to presume that these vehicles were sold at retail. Given that petitioner
5 has provided no information as to their selling prices, we conclude that the markup approach is an
6 appropriate method by which to establish the measure of tax.

7 Petitioner has provided no analysis or documentation to show that the 34.50 percent audited
8 markup is overstated. In fact, as explained in the D&R, we conclude that the Department made two
9 errors in its markup analysis and that the correct markup was 62.2 percent. We therefore find that use
10 of a markup of only 34.50 percent was to petitioner's benefit, and that no reduction to the audited
11 markup is warranted. Nor has petitioner identified any specific sales as nontaxable sales for resale.
12 No resale certificates or Department of Motor Vehicle wholesale reports of sale were provided to
13 demonstrate nontaxable sales for resale. Rather, all of the available sales contracts indicate petitioner
14 made only retail sales. Accordingly, we do not recommend any adjustment for sales for resale.

15 **Issue 2:** Whether petitioner was negligent. We conclude that he was.

16 The Department imposed the negligence penalty based on petitioner's failure to maintain
17 complete records to account for the disposition of all of the vehicles he purchased, and based on the
18 significant discrepancy between the gross receipts petitioner reported on his federal returns and the
19 gross receipts he reported on his sales and use tax returns, which indicated that petitioner was negligent
20 in reporting.

21 Petitioner provided 83 vehicle sales contracts for audit, totaling \$343,653, which showed that
22 he collected sales tax reimbursement on all of those transactions. However, petitioner reported taxable
23 sales of only \$167,125, less than one-half of the sales recorded on the available contracts. This is clear
24 evidence of petitioner's negligence in reporting. Petitioner's overall error rate in reporting was 368
25 percent (\$615,347 audited understatement of taxable sales compared to \$167,125 reported taxable
26 sales) which is further substantial evidence of negligence in reporting. Petitioner's records showed
27 that he purchased at least 73 other vehicles for which he has not provided documentation of their
28 disposition. This is clear evidence that petitioner failed to maintain the records with due care as

1 expected of a reasonably prudent businessperson. We conclude that the negligence penalty was
2 properly imposed.

3 **OTHER DEVELOPMENTS**

4 None.

5
6 Summary prepared by Pete Lee, Business Taxes Specialist II
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	100% taxable
Mark-up percentages developed	34.50%
Self-consumption allowed in dollars	none
Self-consumption allowed as a percent of total purchases	0%
Pilferage allowed in dollars	none
Pilferage allowed as a percent of total purchases	0%