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: BIZ SOURCE INC., dba Liquor Box Petitioner	Account Number: SR Y EH 100-506147 Case ID 493796 Riverside, Riverside County

Type of Business: Liquor stores

Audit period: 01/02/05 – 12/31/07

Item	Disputed Amount
Understatement of reported taxable sales	$124,039
Negligence penalty	$ 2,640

	Tax	Penalty
As determined	$30,802.70	$3,080.28
Post-D&R adjustments	- 4,398.86	- 439.84
Proposed redetermination	$26,403.84	$2,640.44
Less concurred	- 16,790.80	00.00
Balance, protested	$ 9,613.04	$2,640.44

Proposed tax redetermination	$26,403.84
Interest through 04/30/12	11,928.76
Negligence penalty	2,640.44
Total tax, interest, and penalty	$40,973.04
Payments	- 1,201.17
Balance Due	$39,771.87
Monthly interest beginning 05/01/12	$ 147.02

This matter was scheduled for Board hearing in October 2011, but petitioner did not respond to the Notice of Hearing, and the matter was scheduled for decision on the nonappearance calendar. Petitioner subsequently requested that the matter be scheduled for oral hearing. The matter was rescheduled for hearing on February 1, 2012, but it was postponed so that the Appeals Division could issue an SD&R.

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the understatement of reported taxable sales. We recommend no further adjustment.

Petitioner operates two liquor stores. For audit, petitioner provided sales and use tax returns and incomplete purchase invoices for the audit period, and federal income tax returns and purchase invoice worksheets for 2005 and 2006. The Sales and Use Tax Department (Department) found that taxable merchandise purchases exceeded reported taxable sales for the years 2005 and 2006. It established audited taxable sales on a markup basis, computing markups of 31.71 percent for beer, 3.51 percent for cigarettes, and 45.55 percent for other taxable merchandise.

Petitioner contends that the audited understatement of reported taxable sales should be reduced by $124,039, from $314,156 to $190,117, asserting that the audited markup for beer is excessive. As support, petitioner has provided advertisements dated in 2005 which document sales of some brands of beer at significantly discounted prices. Using those advertisements, petitioner has computed a markup of 1.95 percent, which it asserts should be used to compute all beer sales.

Since petitioner has documented that it made some, but not all, sales of beer at significantly discounted prices, the Department proposed that the audited markup be weighted based on an estimate of 30 percent of beer sold at a markup of 1.95 percent and 70 percent sold at a markup of 31.71 percent. Since we find this to be reasonable, we recommend in the D&R a reduction of the audited markup for beer to 22.78 percent. In the absence of evidence to support further adjustments, we recommend no other reduction of the understatement of reported taxable sales.

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

The Department imposed the negligence penalty because petitioner’s records were not adequate for sales and use tax purposes, the understatement occurred throughout the audit period, and the understatement is large in relation to the reported measure of tax. Petitioner disputes the penalty on the basis that it provided records for the audit period.

Petitioner did not provide any source documents to support recorded sales, and the purchase invoices were incomplete. In sum, petitioner did not keep adequate records. In addition, the overall understatement of $340,694 is substantial and represents about 23 percent of reported taxable measure of $1,461,841, with recorded purchases of taxable merchandise exceeding reported taxable sales for at least two years of the audit period. We find that any businessperson, even one with limited experience, should be aware that complete records must be maintained and should recognize that purchases of taxable merchandise generally do not exceed sales of those goods. Thus, we find that petitioner was negligent, even though there has been no prior audit of this business.

RESOLVED ISSUE

The Department found that petitioner owed use tax on $6,600 of purchases of consumable supplies from Sam's Club, which we recommended in the D&R be reduced to $3,560 because of errors in the Department's schedules. The remaining purchases included items such as display racks, cash registers, cash register tape, printers, brooms, and office supplies. In the SD&R, we found that the resale certificate petitioner issued to Sam's Club specifically identified the items to be purchased for resale as "cigarettes, sodas, and tobacco products." Since that specific resale certificate does not apply to purchases of the types of items for which use tax was assessed in the audit, we found in the SD&R that the measure of tax for purchases subject to use tax should be deleted.

OTHER MATTERS

None.

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

MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	Unknown*
Mark-up percentages developed	Cigarettes 3.51% Beer 22.78% Other taxable 45.55%
Self-consumption allowed in dollars	None**
Pilferage allowed in dollars	2005 - $1,345 2006 - $5,680
Pilferage allowed as a percent of taxable purchases	1%

* Instead of computing a percentage of taxable to total merchandise purchases, the Department totaled the audited purchases of cigarettes, beer, and other taxable merchandise. Accordingly, the percentage of taxable to total purchases is not computed in the audit.

** The Department made no adjustment for the cost of self-consumed taxable merchandise because petitioner asserted that self-consumed goods are rung on the cash register as sales.