

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 TIMOTHY SCOT BOHL and ) Account Number: SR KHM 100-023532  
 6 WENDY LEE BOHL, ) Case ID 396620  
 7 dba Cabinets Unlimited )  
 8 Petitioner ) Chester, Plumas County

8 Type of Business: Construction contractor

9 Audit period: 10/1/02 – 9/30/05

10 <u>Item</u>	<u>Disputed Amount</u>	
11 Unreported taxable sales	\$156,106	
12 Amnesty interest penalty	\$ 54	
13 Tax determined		\$37,475.83
14 Adjustment - Sales and Use Tax Department		-11,881.94
15 - Appeals Division		<u>-14,276.20</u>
16 Proposed redetermination, protested		<u>\$11,317.69</u>
17 Proposed tax redetermination		\$11,317.69
18 Interest through 11/30/11		<u>6,021.77</u>
19 Total tax and interest		\$17,339.46
20 Payments		<u>- 3,352.40</u>
21 Balance Due		<u>\$13,987.06</u>
22 Monthly interest beginning 12/1/11		<u>\$39.83</u>

## 20 UNRESOLVED ISSUES

21 **Issue 1:** Whether additional adjustments are warranted to the audited understatement of taxable  
 22 sales. We conclude that no additional adjustments are warranted.

23 Petitioner is a construction contractor who installs prefabricated cabinets and countertops. It  
 24 purchases materials and fixtures without payment of tax or tax reimbursement by issuing resale  
 25 certificates to its vendors, and bills its customers tax reimbursement based on marked-up selling prices  
 26 on time-and-material contracts. The Sales and Use Tax Department (Department) concluded that  
 27 petitioner was the retailer of the property furnished and installed. Since a comparison of sales reported  
 28 on petitioner's sales and use tax returns with the cost of goods sold it reported on its federal income tax

1 returns resulted in negative book markups, the Department decided to compute petitioner's sales using  
2 the markup method. The Department noted that petitioner purchased its products from five main  
3 vendors, marked up the purchases from those vendors by markups specific to those vendors, computed  
4 a weighted average markup of 11.94 percent, added the 11.94 percent markup to total recorded  
5 purchases to compute audited taxable sales, compared the audited taxable sales to reported taxable  
6 measure, and established a taxable sales understatement of \$516,908. Subsequently, petitioner  
7 provided documentation that its recorded purchases were inaccurate. The understatement has now  
8 been reduced to \$156,106. Petitioner contends that it was the consumer of the property that it  
9 furnished and installed, and thus owes tax only on cost.

10 A construction contractor is generally the consumer of materials it furnishes and installs, except  
11 that a contractor who furnishes and installs materials pursuant to a time and material contract is the  
12 retailer of those materials where the contractor bills the customer an amount for sales tax computed on  
13 a marked up price for materials. (Cal. Code Regs., tit. 18, § 1521, subd. (b)(2)(A)2.) A construction  
14 contractor is the retailer of fixtures it furnishes and installs, and prefabricated cabinets are fixtures.  
15 (Cal. Code Regs., tit. 18, § 1521, subd. (b)(2)(B).)

16 Petitioner issued resale certificates to its vendors for the cabinets and countertops that it  
17 purchased and installed, and collected sales tax reimbursement from its customers based on marked up  
18 prices for the property in time and material contracts. As such, petitioner was the retailer of such  
19 property, and we therefore conclude no adjustment is warranted.

20 **Issue 2:** Whether the amnesty interest penalty should be relieved. We conclude relief is not  
21 warranted.

22 Petitioner did not apply for amnesty, and thus an amnesty interest penalty will be imposed with  
23 respect to the liability for the fourth quarter 2002 this liability is final. Although petitioner was advised  
24 at the appeals conference that it could submit a request for relief, it has not done so. Accordingly, we  
25 have no basis upon which to consider recommending relief.

## 26 OTHER DEVELOPMENTS

27 None.

28 Summary prepared by Pete Lee, Business Taxes Specialist II

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**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentages developed	11.94%
Self-consumption allowed in dollars	\$0
Pilferage allowed in dollars	\$0