STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest and Claims for Refund Under the Sales and Use Tax Law of:	)	
LOUIS JOHN BONACICH, JR., dba Specialty Sales/All Green Hydro	)	Account Number SR KH 28-910657 Case ID's 493991, 568375
Taxpayer/Claimant	)	Orangevale, Sacramento County

Type of Business: Manufacturer of outdoor patio furniture

Audit period: 01/01/04 – 12/31/06

Item	Disputed Amount
Unreported taxable sales	$ 52,627
Taxable sales recorded as nontaxable in error	$ 31,929
Negligence penalty	$ 649

	Tax	Penalty
As determined	$7,884.96	$788.51
Finality penalty		788.50
Pre-D&R adjustment	- 220.58	- 22.01
Post D&R adjustment	- 1,178.80	- 906.39
Adjusted tax and penalty, protested	$6,485.58	$648.61

Adjusted tax	$ 6,485.58
Interest	2,816.94
Negligence penalty	648.61
Total tax, interest, and penalty	$ 9,951.13
Payments	- 9,951.13[1]
Balance Due	$ 00.00

This matter was scheduled for Board hearing in March 2012, but was postponed at taxpayer's request because of a scheduling conflict.

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the unreported taxable sales. We find no further adjustment is warranted.

[1] Petitioner's total payments, through March 2012, total $10,779.98, and the overstatement of $828.85 has not been refunded. Taxpayer has filed claims for refund, which we find are timely-filed for payments totaling $2,750.00.

Taxpayer operated a liquor store under this seller's permit from June 1992 through October 2001. After he sold the liquor store, he began manufacturing outdoor furniture, and he retained the seller's permit for that new line of business. Taxpayer provided incomplete records for audit, and the Sales and Use Tax Department (Department) concluded that the sales invoices and sales summaries taxpayer provided for 2004 and 2006 represented the best available evidence of taxpayer's sales. After adjusting the sales summaries for two unrecorded sales and one cancelled sale, the Department computed recorded taxable sales for 2004 and 2006. It compared those amounts to reported taxable sales to compute a percentage of error which it applied to reported amounts for 2005 to establish the understatement for that year. In the first reaudit, the correction of a computational error resulted in increases to the amounts of audited taxable sales for 2004 and 2005. However, those increases were offset by an adjustment for a nontaxable sale for which taxpayer provided a resale certificate during the first reaudit. After the determination was issued, taxpayer also provided a reconstructed sales summary for 2005, and sales invoices, cancelled checks, and credit card receipts, which reconciled roughly with taxpayer's reported taxable sales for that year. However, the Department rejected those records as unreliable since it could not be established that the invoices were complete.

Taxpayer contends that adjustments should be made for recorded sales that were never consummated. He also claims that the amount of taxable sales established for 2005 is excessive, based on the reconstructed records provided. Alternatively, taxpayer asserts that the average error rate used to establish taxable sales for 2005 is excessive because some sales recorded in 2004 were not completed until 2005.

The Department has used taxpayer's sales invoices and sales summaries for 2004 and 2006 to establish audited taxable sales, notwithstanding its reasonable concern that those records may have been incomplete. We find that the Department's audit method was appropriate, and taxpayer has provided no persuasive documentation to support further adjustments for sales that were not consummated. Also, we reject taxpayer's assertion that the reconstructed records for 2005 should be accepted as accurate since there is no evidence to show that the available sales invoices are complete. In addition, taxpayer has provided no documentation that some sales commenced in 2004 were not completed until 2005. Further, even if such documentation were available, an adjustment might not be

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warranted because those sales would likely be offset by other sales, commenced and recorded in 2003, but not completed until 2004. Thus, we find no further adjustment is warranted.

Issue 2: Whether adjustments are warranted to the amount of taxable sales recorded as nontaxable sales in error. We find no adjustment is warranted.

The Department has allowed sales to two customers as valid nontaxable sales for resale, based on a resale certificate provided during the first reaudit and on the Department's research regarding the purchasers' types of business. Taxpayer contends that all recorded nontaxable sales for resale should be allowed because, while he misunderstood the requirements for retaining valid resale certificates, it was his understanding that the sales were for resale at the time they were made. Although taxpayer sent XYZ letters for the remaining questioned transactions, he received no responses. Also, the Department found no evidence that any of those remaining sales were made to purchasers who held valid seller's permits and were engaged in the business of selling outdoor furniture. Thus, we find the evidence does not support any further adjustments.

Issue 3: Whether taxpayer was negligent. We conclude that he was.

The Department imposed the negligence penalty because taxpayer's records were not adequate. Taxpayer disputes the penalty on the basis that reported sales were accurate and his records were adequate. Regarding 2005, taxpayer states the records were unavailable because they were lost in a move precipitated by his divorce.

Taxpayer's records were incomplete and conflicting. Also, the understatement of $84,556 represents an understatement of about 44 percent when compared to reported taxable sales of $192,321. We find that the inadequacy of the records and the magnitude of the understatement are evidence of negligence, particularly since taxpayer is an experienced business person who had been audited previously when he operated a liquor store under this seller's permit number. Accordingly, we find that the negligence penalty was properly applied.

RESOLVED ISSUE

Since taxpayer did not timely pay the determination or file a petition for redetermination, a finality penalty was automatically applied. Taxpayer submitted a request for relief of the finality penalty on the basis that he thought he had filed a timely appeal and that his case was in the appeals

process. We find it credible that taxpayer misunderstood the requirements for filing a timely petition, particularly since he had expressed his disagreement with the audit in writing prior to the issuance of the determination. Thus, giving taxpayer the benefit of the doubt, we recommend relief of the finality penalty (the tax, interest, and negligence penalty have been paid in full).

OTHER MATTERS

While reviewing the case for the previously scheduled Board hearing, the Department identified errors in the audit computations, and it prepared a second reaudit to eliminate duplications of certain transactions. That adjustment reduced the difference between recorded and reported taxable sales by $15,378, from $68,005 to $52,627. Based on the second reaudit, taxpayer has made an overpayment of $828.85, and we therefore recommend that the claims for refund be granted in this amount and otherwise denied.

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

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