

**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: )  
BUY RITE AUTO WHOLESALE ) Account Number SR KH 100-167841  
Petitioner ) Case ID 523718  
Rocklin, Placer County )

Type of Business: Used car dealer

Audit period: 01/01/05 – 12/31/07

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$42,204		
As determined		\$3,270.82	\$327.09
Post-D&R adjustment		<u>00.00</u>	<u>- 327.09</u>
Proposed redetermination, protested		<u>\$3,270.82</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$3,270.82	
Interest through 08/31/12		<u>1,215.43</u>	
Total tax and interest		\$4,486.25	
Payments		<u>- 6.00</u>	
Balance Due		<u>\$4,480.25</u>	
Monthly interest beginning 09/01/12		<u>\$ 16.32</u>	

**UNRESOLVED ISSUE**

**Issue:** Whether adjustments are warranted to the unreported taxable sales. We find no adjustments are warranted.

Petitioner sells used cars, primarily at auto auctions. It does not maintain a vehicle sales lot open to the public. For the audit period, petitioner reported total sales of \$4,432,147, all of which it claimed as nontaxable sales for resale. The Sales and Use Tax Department (Department) found that petitioner had reported total sales of \$22,177,281 on its federal income tax returns and that the amount deposited in the bank (net of capital contributions and loan proceeds) totaled \$22,232,483. The Department concluded that the sales reported on petitioner's federal tax returns represented nontaxable sales for resale and that the difference between those amounts and the \$22,232,483 deposited in the

1 bank represented a potential understatement of reported taxable sales of \$55,202. The Department  
2 noted, however, that no Report of Sale (ROS) forms had been issued to petitioner by the Department of  
3 Motor Vehicles (DMV) until 2006. Accordingly, the Department established unreported taxable sales  
4 of \$42,204, the amount of difference associated with 2006 and 2007. The Department observed that  
5 petitioner had been issued 50 retail ROS forms, and the first five of those forms were missing, while  
6 the remaining 45 forms were available, but unused. Therefore, as secondary verification of its  
7 findings, the Department estimated petitioner's taxable sales based on five sales at an average retail  
8 selling price of \$8,877 (computed using vehicle purchase information for 2005 and average retail  
9 selling prices published by Kelly Blue Book). The Department regarded the total of \$44,385, which  
10 was consistent with the audited amount of unreported taxable sales of \$42,204, as secondary support  
11 for the audit findings.

12         Petitioner contends that it made no retail sales of vehicles, asserting that DMV incorrectly  
13 issued the retail ROS to petitioner. Further, petitioner states that the signature on the request for ROS  
14 forms is not petitioner's signature. Petitioner asserts that the amount of bank deposits in excess of  
15 gross receipts reported on federal tax returns represents additional capital contributions or loan  
16 proceeds. Petitioner has requested that the DMV trace each of the five ROS forms and describe each  
17 of the sales and argues that, without detailed information regarding each sales, it is inappropriate to  
18 conclude that petitioner made any retail sales.

19         Petitioner has not provided any summary of sales or other evidence to establish the identity of  
20 the purchasers for any of its sales. Moreover, petitioner has not provided any documentation to  
21 support its assertion that additional adjustments to the bank deposit analysis are warranted for capital  
22 contributions or loan proceeds. In addition, when the business first opened in 2003, petitioner reported  
23 all of its vehicle sales as taxable, which controverts petitioner's argument that all its sales were sales  
24 for resale. Petitioner has provided a copy of the DMV order form for 50 retail ROS forms, and it does  
25 appear that the signature on that order form is different from the signatures on petitioner's order forms  
26 for wholesale ROS. However, the fact remains that petitioner received 50 retail ROS. At the appeals  
27 conference, petitioner stated that it did not return the retail ROS forms to DMV because it was  
28 considering making retail sales. In any event, we reject petitioner's assertion that it is inappropriate to

1 conclude petitioner made retail sales unless DMV provides details regarding each of the five sales  
2 because it is our understanding that DMV does not keep a record of the ROS number for each sale.  
3 We find, based on the available evidence, that petitioner made five retail sales and that no adjustment  
4 is warranted to the amount of unreported taxable sales.

5 **RESOLVED ISSUE**

6 The Department imposed a negligence penalty because petitioner did not maintain adequate  
7 books and records. Petitioner protested the penalty on the basis that there were no unreported taxable  
8 sales because all its sales were nontaxable sales for resale. We find that petitioner's failure to maintain  
9 complete and adequate records was caused primarily by its (incorrect) understanding that it was not  
10 required to keep detailed records because all of its sales were for nontaxable sales for resale. Also, we  
11 note that the unreported taxable sales of \$42,204 represent less than one percent of petitioner's sales of  
12 more than \$22 million. Accordingly, we do not find sufficient evidence to conclude that petitioner was  
13 negligent, particularly since it had not been audited previously.

14 **OTHER MATTERS**

15 None.

16  
17 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28