

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Administrative Protest)
4 Under the Sales and Use Tax Law of:)5 RICHARD FESTO BWOGI, dba Ganda Car Sales)
6 Taxpayer)Account Number SR AS 99-272145
Case ID 514577

Los Angeles, Los Angeles County

8 Type of Business: Used car dealer

9 Audit period: 01/01/05 – 12/31/05

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales	\$24,611
12 Negligence penalty	\$ 870
13 Finality penalty	\$ 870
14 Interest	\$ 5,156

	<u>Tax</u>	<u>Penalty</u>
14 As determined	\$33,615.21	\$3,361.52
15 Finality penalty		3,361.52
16 Pre-D&R adjustment	- 23,350.80	-4,670.16
17 Post-D&R adjustment	- 1,562.64	- 312.52
18 Proposed liability	\$ 8,701.77	\$1,740.36
19 Less concurred	- 6,671.37	00.00
20 Balance, protested	<u>\$ 2,030.40</u>	<u>\$1,740.36</u>
21 Tax, as adjusted	\$ 8,701.77	
22 Interest through 02/28/13	5,155.66	
23 Negligence penalty	870.18	
24 Finality penalty	870.18	
25 Total tax, interest, and penalty	<u>\$15,597.79</u>	
26 Monthly interest beginning 03/01/13	<u>\$ 43.51</u>	

23 This matter was scheduled for Board hearing in July 2012, but was postponed at taxpayer's
24 request to allow additional time to prepare for the hearing. It was rescheduled for Board hearing in
25 October 2012, but was postponed again at taxpayer's request due to medical reasons.

26 UNRESOLVED ISSUES

27 **Issue 1:** Whether adjustments are warranted to the amount of unreported taxable sales. We
28 find no further adjustment is warranted.

1 Taxpayer operated a used car dealership. He ceased operations and closed out his dealer's
2 license effective August 27, 2005, but did not notify the Sales and Use Tax Department (Department)
3 until December 2008. The Department attempted to contact taxpayer using the last known mailing
4 address and telephone number, but the letters were returned as undeliverable and taxpayer's telephone
5 had been disconnected. Since it could not contact taxpayer to request books and records, the
6 Department used available information from auto auctions and the Department of Motor Vehicles
7 (DMV). The Department identified 116 vehicle purchases by taxpayer during the period January 1,
8 2005, through August 31, 2005. Subsequently, after it did contact taxpayer and have discussions with
9 him and conduct further review of DMV records, the Department deleted several of the vehicles from
10 the computation of the unreported measure of tax for various reasons (i.e., the vehicle was sold for
11 resale or the purchaser paid use tax to DMV). The remaining measure of tax of \$105,476 represents
12 selling prices of 11 vehicles, and taxpayer agrees that it made taxable sales of seven of those vehicles,
13 totaling \$80,865. Thus, the amount in dispute (\$24,611) represents the total of the selling prices of
14 four vehicles.

15 Taxpayer contends that the disputed sales are not subject to tax, arguing that the Department
16 failed to follow generally accepted accounting principles and that it used DMV records in an improper
17 manner to estimate audited sales. In addition, taxpayer raised specific contentions with respect to each
18 of the four disputed transactions. Taxpayer contends that two of the vehicles were sold for resale and
19 that, for the other two vehicles, either he or the customer paid "user fees" directly to DMV, which he
20 asserts represented tax.

21 Generally accepted accounting principles provide authoritative guidance and standards for use
22 in preparation of financial statements, but they are not pertinent to the issue at hand, which is the
23 unreported amount of sales and use tax. We also reject taxpayer's assertion that the Department used
24 DMV records improperly: we find there was nothing improper about the Department's use of the
25 DMV records. Regarding the vehicles taxpayer states were sold for resale, he has not provided resale
26 certificates or other supporting evidence. Further, the vehicles were registered under taxpayer's name
27 for extended periods (almost two years and almost four years) before they were sold. Thus, we find
28 taxpayer used the vehicles prior to selling them, and he owes use tax on the purchase cost of these

1 vehicles, which is the measure of tax established in the audit. Regarding the other two vehicles, our
2 review of the DMV reports shows that the amounts paid by taxpayer or the customer were not
3 payments of use tax. Thus, we reject taxpayer's claim that those sales should be deleted from the
4 audited measure of tax.

5 **Issue 2:** Whether taxpayer was negligent. We find that he was.

6 The Department applied the negligence penalty because taxpayer did not provide any books
7 and records. Taxpayer disputes the penalty, arguing that the reason he failed to provide books and
8 records was that he had surrendered them to DMV when he closed his dealer's license.

9 The remaining understatement is \$105,476. In some contexts, this would not be a large
10 understatement. Here, however, where taxpayer reported no taxable sales during the audit period, we
11 consider the understatement significant. We believe that, since taxpayer had been in business since
12 1993, he should have known that some of his purchases and sales were subject to tax. Further,
13 taxpayer provided no books or records. We reject taxpayer's explanation that he surrendered all
14 records to DMV because, while a vehicle dealer is required to surrender certain records to DMV when
15 the business is closed (e.g., Report of Sale forms), it is not required to surrender all business records
16 reflecting its purchases and sales of vehicles (e.g., general ledgers, deal jackets, sales contracts). We
17 find that a reasonably prudent businessperson would have recognized that records must be maintained
18 and that taxable sales must be reported. Accordingly, we find taxpayer was negligent and the penalty
19 was properly applied, even though the business had not been audited previously.

20 **Issue 3:** Whether relief of the finality penalty is warranted. We find relief is not warranted.

21 Since taxpayer did not pay the determination or file a petition for redetermination within
22 30 days after the determination was issued, a finality penalty was applied. Taxpayer has requested
23 relief of the finality penalty on the basis that he was not timely notified of the liability because the
24 determination was sent to the wrong address. Taxpayer states he became aware of the liability when
25 he visited the business location several months after the business had been closed and found the
26 Department's collection notices.

27 When taxpayer closed his business, he did not notify the Board he had ceased business or
28 provide a forwarding address and telephone number. We find that any delay associated with

1 taxpayer's receipt of the determination was the result of his failure to provide that information to the
2 Board. Consequently, we find his failure to timely pay the liability or file a petition for
3 rederermination was not due to reasonable cause, and relief of the finality penalty is not warranted.

4 **Issue 4:** Whether relief of interest is warranted. We find relief is not warranted.

5 Taxpayer has filed a request for relief of interest on the basis that there are errors in the audit
6 and that interest should not be applied until the errors are corrected. Relief of interest is warranted
7 only under very narrow circumstances, none of which are present here. Accordingly, we find no basis
8 to recommend relief of interest.

9 **OTHER MATTERS**

10 None.

11
12 Summary prepared by Lisa Burke, Business Taxes Specialist III

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28