

## 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	\$ 4,851

	<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 Proposed tax redetermination	\$ 8,701.77	
22 Interest through 07/31/12	4,851.09	
23 Negligence penalty	870.18	
24 Finality penalty	870.18	
25 Total tax, interest, and penalty	<u>\$15,293.22</u>	
26 Monthly interest beginning 08/01/12	<u>\$ 43.51</u>	

## 23 UNRESOLVED ISSUES

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

26 Taxpayer operated a used car dealership. He ceased operations and closed out his dealer's  
27 license effective August 27, 2005, but did not notify the Sales and Use Tax Department (Department)  
28 until December 2008. The Department attempted to contact taxpayer using the last known mailing

1 address and phone number, but the letters were returned as undeliverable and taxpayer's telephone had  
2 been disconnected. Since it could not contact taxpayer to request books and records, the Department  
3 used available information from auto auctions and the Department of Motor Vehicles (DMV). The  
4 Department identified 116 vehicle purchases by taxpayer during the period January 1, 2005, through  
5 August 31, 2005. Subsequently, after it did contact taxpayer and have discussions with him and  
6 conduct further review of DMV records, the Department deleted several of the vehicles from the  
7 computation of the unreported measure of tax for various reasons (i.e., the vehicle was sold for resale  
8 or the purchaser paid use tax to DMV). The remaining measure of tax of \$105,476 represents selling  
9 prices of 11 vehicles, and taxpayer agrees that it made taxable sales of seven of those vehicles, totaling  
10 \$80,865. Thus, the amount in dispute (\$24,611) represents the selling prices of four vehicles.

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

17 Generally accepted accounting principles provide authoritative guidance and standards for use  
18 in preparation of financial statements, but they are not pertinent to the issue at hand, which is the  
19 unreported amount of sales and use tax. Also, we reject taxpayer's assertion that the Department used  
20 DMV records improperly. Regarding the vehicles taxpayer states were sold for resale, he has not  
21 provided resale certificates or other supporting evidence. Further, the vehicles were registered under  
22 taxpayer's name for extended periods (almost two years and almost four years) before they were sold.  
23 Thus, we find taxpayer used the vehicles prior to selling them, and he owes use tax on the purchase  
24 cost of these vehicles, which is the measure of tax established in the audit. Regarding the other two  
25 vehicles, our review of the DMV reports shows that the amounts paid by taxpayer or the customer  
26 were not payments of use tax. Thus, we reject taxpayer's claim that those sales should be deleted from  
27 the audited measure of tax.

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

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

4           The remaining understatement is \$105,476. In some contexts, this would not be a large  
5 understatement. Here, however, where taxpayer reported no taxable sales during the audit period, we  
6 consider the understatement significant. We believe that, since taxpayer had been in business since  
7 1993, he should have known that some of his purchases and sales were subject to tax. Further,  
8 taxpayer provided no books or records. We reject taxpayer's explanation that he surrendered all  
9 records to DMV because, while a vehicle dealer is required to surrender certain records to DMV when  
10 the business is closed, it is not required to surrender business records that represent its purchases and  
11 sales of vehicles. We find that any businessperson should have recognized that records must be  
12 maintained and that taxable sales must be reported. Accordingly, we find taxpayer was negligent and  
13 the penalty was properly applied, even though the business had not been audited previously.

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

15           Since taxpayer did not timely pay the determination or file a petition for redetermination, a  
16 finality penalty was applied. Taxpayer has requested relief of the finality penalty on the basis that he  
17 was not timely notified of the liability because the determination was sent to an erroneous address.  
18 Taxpayer states he became aware of the liability when he visited the business location several months  
19 after the business had been closed and found the Department's collection notices.

20           When taxpayer closed his business, he did not notify the Board he had ceased business or  
21 provide a forwarding address and telephone number. We find that any delay associated with  
22 taxpayer's receipt of the determination was the result of his failure to provide that information to the  
23 Board. Consequently, we find his failure to timely pay the liability or file a petition for  
24 redetermination was not due to reasonable cause, and relief of the finality penalty is not warranted.

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

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

3 **OTHER MATTERS**

4 None.

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