

1 Department decided to establish audited taxable sales by markup, and determined that petitioner
2 understated its taxable sales by \$1,596,815 for the audit period.

3 At the appeals conference, petitioner contended that its computerized sales journal provided for
4 audit contained input errors. It subsequently provided a reconstructed sales journal that listed taxable
5 sales of \$1,057,600 for 2005. Since petitioner reported taxable sales of \$999,755 for 2005, the
6 understatement for 2005 based on the journal would be \$57,845. To verify the accuracy of the
7 reconstructed sales journal, the Department traced February 2005 sales invoices to the February 2005
8 reconstructed sales and found seven invoices for retail sales of tangible personal property totaling
9 \$23,921 that were not recorded in the reconstructed sales journal. The amount of the omitted invoices
10 compared to the \$91,649 taxable sales recorded in the journal for February 2005 results in a
11 26.10 percent understatement of recorded taxable sales. The Department applied the 26.10 percent
12 error ratio to the \$1,057,600 taxable sales listed in the reconstructed sales journal to compute audited
13 taxable sales in 2005 of \$1,333,635. Compared to reported taxable sales for 2005, this results in
14 understated reported taxable sales of \$333,880, which represents a 33.40 percent error ratio. The
15 Department applied the 33.40 percent error ratio to the reported taxable sales for the audit period of
16 \$3,345,832 to compute understated taxable sales of \$1,117,455.

17 Of the seven invoices the Department determined were omitted from the reconstructed sales
18 journal for February 2005, petitioner contends that four were to record partial payments and that the
19 sales represented by those invoices were recorded in its sales journals after February 2005, when full
20 payment was received from the clients. Petitioner had no explanation of why the other three invoices
21 were not recorded in its reconstructed sales journal. Thus, the only issue is whether the four “partial
22 payment” invoices should result in an adjustment. We note first that petitioner was required to report
23 tax for the quarter in which the sale occurred, not based on when full payment was made. In any
24 event, the Department reviewed petitioner’s complete sales journals and did not find the four invoices
25 recorded (or the other three omitted from the journal for February 2005). The Department gave
26 petitioner the opportunity to determine where in its sales journal the sales were recorded, but petitioner
27 was also unsuccessful in locating the sales invoices in any of its sales journals. Absent additional
28 evidence, there is no basis on which to recommend any additional reductions to the measure of tax.

1 The Department based its calculations on petitioner's own records, and petitioner has not
2 documented any mistake in the Department's calculations. Absent additional evidence, we find that
3 there is no basis for any further reduction to the measure of tax.

4 **Issue 2:** Whether petitioner was negligent. We conclude that it was.

5 The Department imposed the negligence penalty because it concluded the error ratio of 33.40
6 percent for understated taxable sales was significant. Petitioner contends that the negligence penalty is
7 not warranted because most of the asserted deficiency is not actually due.

8 For the reasons explained above, we conclude that the asserted deficiency is due. The size of
9 that deficiency and the error rate are significant, We also find that petitioner did not maintain accurate
10 records, and the records provided for audit did not support the reported amounts. Furthermore, the
11 reconstructed sales journal was also inaccurate, having failed to include all taxable sales. We note that
12 this is petitioner's second audit, so we expect petitioner was or should have been aware of the
13 requirement to maintain accurate records. Accordingly, we find that petitioner was negligent and the
14 penalty properly imposed.

15 **OTHER DEVELOPMENTS**

16 None.

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