STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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: IKE REUBEN CHUKWUDI, dba West Coast Autos Petitioner	Account Number: SR EH 97-633262 Case ID 505067 Gardena, Los Angeles County

Type of Business: Used car dealer

Audit period: 01/01/05 – 12/31/08

Item	Disputed Amount
Unreported taxable sales	$2,260,262
Cost of vehicles subject to use tax	$ 75,075
Negligence penalty	$ 18,515

	Tax	Penalty
As determined:	$179,421.81	$17,942.20
Pre-D&R adjustment	+ 5,726.17	+ 572.61
Proposed redetermination	$185,147.98	$18,514.81
Less concurred	- 4,159.35	00.00
Balance, protested	$180,988.63	$18,514.81

Proposed tax redetermination	$185,147.98
Interest through 04/30/12	70,056.14
Negligence penalty	18,514.81
Total tax, interest, and penalty	$273,718.93

Monthly interest beginning 05/01/12	$ 1,080.03

This matter was scheduled for Board hearing in on October 27, 2011, and again on January 31, 2012, but was postponed each time at petitioner's request because his representative had a scheduling conflict.

UNRESOLVED ISSUES

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

Petitioner was a used car dealer, and his dealer license with the Department of Motor Vehicles (DMV) was closed effective June 2008. For audit, petitioner provided no summary records of sales or

purchases except his federal income tax returns, and otherwise provided only incomplete deal jackets, without any sales contracts.

The Department contacted known auto auction houses regarding their sales to petitioner for the period January 1, 2005, through June 30, 2008, and compiled vehicle purchases of $561,728 from Manheim and Manheim (M&M) and Insurance Auto Auctions Inc. (IAAI) and purchases of $1,328,092 from Copart. The Department used the information provided by auto auctions, adjusted for buyer's fees that were not listed on certain purchases, to establish total purchases of $1,920,933 for the period January 1, 2005, through June 30, 2008. Comparing the cost figures to the selling prices in vehicle history reports maintained by the Board's Consumer Use Tax Section, the Department computed a markup of 21.82 percent, which it used to establish total sales of $2,340,092. The Department reduced that amount by $19,141 for sales that were not subject to tax, because either the purchaser had paid use tax to DMV or the sales were made to another vehicle dealer, to compute taxable sales of $2,320,951, which exceeded reported taxable sales of $7,020 by $2,313,931.

Petitioner disputes the audited amount of taxable sales. First, he asserts that he purchased no vehicles from Copart and that the total amount of purchases from Copart should be deleted from the audited cost of goods sold. Petitioner also claims that sales of 90 to 95 percent of the vehicles purchased from M&M and IAAI were exempt because the vehicles were exported to Africa.

As support for his assertion that he did not purchase vehicles from Copart, petitioner has provided a copy of a Bidder Registration Form that shows Felix Enunwa as the registered owner and Sam Uwea as an employee for West Coast Autos at 2901 South Riverside Avenue, Colton (petitioner's business name and business address). Petitioner states he does not know anyone by those names and claims someone must have stolen his information to make purchases from Copart.

We find that the information from Copart is evidence that petitioner made a significant number of purchases of vehicles from Copart. We further find that the Bidder Registration Form provided by petitioner is not sufficient to satisfy petitioner's burden of proof to show that he did not make purchases from Copart because it does not identify the dealer's license number of the registered bidder. The D&R explains two types of documentation that would be persuasive, but petitioner has not provided those documents or any other additional evidence that he did not make purchases from

Copart. Accordingly, we find the evidence does not support petitioner's assertion that all purchases from Copart should be deleted from the audited cost of goods sold.

To support his claim that the majority of his sales were exempt sales of vehicles exported to Africa, petitioner notes that the majority of the vehicle history reports received from the Consumer Use Tax Section do not show that the purchasers registered the vehicles in California. We find the fact purchasers did not register the vehicles in California does not represent evidence that the vehicles, pursuant to the contracts of sale, were required to be shipped and were shipped to a point outside this state by means of: 1) facilities operated by the retailer; or 2) delivery by the retailer to a carrier, customs broker or forwarding agent, whether hired by the purchaser or not, for shipment to such out of state point. Accordingly, we find petitioner has not met his burden of proof to show that the sales were exempt. (See Rev. & Tax. Code, § 6396, and Cal. Code Regs., tit. 18, § 1620, subd. (a)(3)(D).) Thus, we find no adjustment is warranted for exempt sales included in the audited amount of total sales.

Issue 2: Whether adjustments are warranted to the audited cost of purchases of vehicles subject to use tax. We find no adjustment is warranted.

In addition to the purchases noted above, the Department found petitioner had purchased vehicles from Copart at a cost of $75,075 during the last two quarters of 2008, when he no longer held a used car dealer's license. The Department concluded that petitioner is liable for use tax with respect to those purchases.

Petitioner contends that he is not liable for use tax with respect to the purchases of $75,075 because he did not purchase any vehicles from Copart. For the same reasons explained above, we find that petitioner has not provided evidence sufficient to show that he did not make the purchases that have been identified by Copart. We further find petitioner owes use tax on his purchases after he no longer held a dealer's license.

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

The Department imposed the negligence penalty because it found petitioner failed to maintain adequate records, and because of the magnitude or the error. Petitioner disputes the penalty on the basis that he did not maintain complete records because he exported 90 to 95 percent of the vehicles. He also asserts that he provided all available records to the Department.

Petitioner's records were severely limited, with no summary records of sales or purchases (other than his federal returns) and no sales contracts. In addition, petitioner reported taxable sales of $7,072 for the audit period, only a miniscule fraction of the $2,389,006 audited taxable sales. Petitioner himself concedes that he made taxable sales of $53,669 while reporting only 13 percent of that conceded amount ($7,072 ÷ $53,669). We find that any business person, even one with limited experience, should have recognized that he was only reporting a fraction of his taxable sales. We find that the incomplete, inadequate records and the substantial understatement are virtually undeniable evidence of negligence, at a minimum, even though petitioner had not been audited previously. Further, we reject petitioner's explanation that he did not maintain records because most of his sales were exempt sales of vehicles exported to Africa. Even if the vehicles were exported, a claim not supported by the evidence, petitioner had the responsibility to maintain sales records and to retain documentation to support the claimed exemption. We conclude that this is a clear case of negligence and that the penalty was properly applied.

OTHER MATTERS

None.

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

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MARKUP TABLE

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentages developed	21.82%
Self-consumption allowed in dollars	None
Pilferage allowed in dollars	None