

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:)
MARCELO CO, dba Qwick Pack Systems) Account Number: SR EH 100-273613
Petitioner) Case ID 485816
Moreno Valley, Riverside County

Type of Business: Retailer of packaging machines

Audit period: 04/01/04 – 06/30/07

<u>Item</u>	<u>Disputed Amount</u>
Unreported sales	\$112,164
Negligence penalty	\$ 900
Tax as determined and protested	\$8,995.61
Interest through 02/29/12	4,756.53
Negligence penalty	899.53
Total tax, interest, and penalty	\$14,651.67
Payments	- 126.18
Balance Due	<u>\$14,525.49</u>
Monthly interest beginning 03/01/12	<u>\$ 51.74</u>

UNRESOLVED ISSUES

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

Petitioner sold packaging machines from January 1, 1996, through March 31, 2010, when he incorporated his business. For audit petitioner provided a federal income tax return for 2005, incomplete sales invoices for the period April 1, 2004, through March 31, 2007, and incomplete sales summaries. The Sales and Use Tax Department (Department) examined all available sales invoices and compiled taxable sales of \$205,643, as well as \$980,383 of exempt or nontaxable sales, \$2,773 of nontaxable shipping charges, and \$16,779 of sales tax reimbursement. Petitioner later provided a second set of invoices dated from April 8, 2004, through February 13, 2007. The Department examined those invoices, removed the documents that were actually sales quotes rather than invoices, and compiled taxable sales of \$237,386, as well as \$1,511,538 of exempt and nontaxable sales, \$4,189

1 of nontaxable shipping charges, and \$19,085 of sales tax reimbursement. Thus, the Department
2 computed a deficiency measured by \$112,164, which is the amount by which the \$443,029 taxable
3 sales compiled from invoices issued during the period April 1, 2004, through March 31, 2007, exceeds
4 reported taxable sales for that period (the Department accepted reported taxable sales of \$71,150 for
5 the second quarter 2007 as substantially accurate).

6 Petitioner contends that the audited taxable sales are erroneous, arguing that he actually over-
7 reported his taxable sales by \$196,372, which is the difference between reported taxable sales of
8 \$402,015 for the audit period and the amount of taxable sales compiled by the Department from the
9 first set of sales invoices provided. Petitioner also asserts that he did not make any sales after February
10 13, 2007, and therefore all sales reported on the return for the second quarter 2007 (2Q07) represent
11 sales made in prior periods which are accounted for in the sales invoices examined by the Department.
12 On that basis, petitioner contends that the sales reported in 2Q07 have been duplicated in the audit, and
13 the maximum understatement is \$41,014 (\$112,164 - \$71,150).

14 The audited amount of taxable sales is based on sales invoices, which are original source
15 documents that evidence petitioner's sales. Petitioner has not identified any errors in the audit
16 calculations, and we have found none. We therefore reject petitioner's contention that the audited
17 amounts of taxable sales are erroneous. Petitioner has also failed to provide any documentary evidence
18 (such as a listing of the sales invoices reported on each return filed for the audit period) to support his
19 assertion that the amounts reported for 2Q07 represent sales made in prior periods, which were thus
20 duplicated in the audit. We find petitioner's contention that audited taxable sales should be based only
21 on the first set of sales invoices provided to be wholly unfounded: the second set of invoices is
22 convincing evidence that the first set of invoices was not complete. We conclude that no adjustments
23 are warranted.

24 **Issue 2:** Whether petitioner was negligent. We conclude that he was.

25 The Department imposed the negligence penalty because petitioner's records were incomplete
26 and because it identified errors in this audit that were similar to those found in the prior audit.
27 Petitioner disputes the penalty on the basis that there was no understatement of reported taxable sales,
28 and he provided all of his records for audit.

