

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:)
DKL INTERTRADING, INC.) Account Number SR AP 100-107306
Petitioner) Case ID 436179
City of Industry, Los Angeles County

Type of Business: Wholesale and retail sales of flooring
Audit period: 07/01/03 – 06/30/06

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed nontaxable sales for resale	\$152,626
Tax as determined	\$28,278.58
Pre-D&R adjustment	- 15,686.86
Proposed redetermination, protested	<u>\$12,591.72</u>
Proposed tax redetermination	\$12,591.72
Interest through 07/31/12	<u>7,883.73</u>
Total tax and interest	<u>\$20,475.45</u>
Monthly interest beginning 08/01/12	<u>\$ 62.96</u>

UNRESOLVED ISSUE

Issue: Whether adjustments are warranted to the disallowed claimed nontaxable sales for resale. We find no further adjustment is warranted.

Petitioner sells wood flooring. The Sales and Use Tax Department (Department) examined petitioner’s claimed nontaxable sales for resale for the second quarter 2004 (2Q04) and 2Q06 and found petitioner did not provide adequate documentation with respect to 60.64 percent of the claimed nontaxable sales. In a reaudit, the Department reduced the percentage of error to 26.61 percent, based on its review of additional documentation provided by petitioner. The remaining transactions in dispute are claimed nontaxable sales to Carpet, Inc., Sung Chang Hyun, and Lee Eun Soo.

While petitioner acknowledges it did not obtain a resale certificate from Carpet, Inc., it asserts its sales to this purchaser should be accepted as valid sales for resale because it did obtain a copy of Carpet, Inc.’s seller’s permit and believed this was adequate to support the claimed sales for resale.

1 With respect to the sales to Sung Chang Hyun and Lee Eun Soo, petitioner states that it did not collect
2 sales tax reimbursement because these purchasers were Arizona residents, and it did not believe the
3 sales were subject to tax. While petitioner does not dispute that tax applies to sales to these purchasers,
4 petitioner asserts that the errors should not be included in the computation of the percentage of error,
5 and that the Department should instead review all claimed sales for resale for the audit period.

6 With respect to the sales to Carpet, Inc., petitioner has provided only a copy of the purchaser's
7 seller's permit. Carpet, Inc. did not respond to XYZ letters seeking to verify whether the products
8 purchased from petitioner were resold, and its seller's permit has been closed. Further, the Department
9 found that Carpet, Inc. reported zero taxable sales for both of the quarters tested, which suggests that it
10 did not purchase products from petitioner to be sold at retail. In addition, the products sold by
11 petitioner were delivered to jobsites throughout California, which is an indication that Carpet, Inc. was
12 acting as a construction contractor and purchasing the carpet as a consumer. Thus, we find that
13 petitioner has not satisfied its burden of proving that its sales to Carpet, Inc. were not sales at retail.
14 Regarding petitioner's assertion that the Department should review all of its claimed nontaxable sales
15 for the audit period, we find that the Department's use of a block test was appropriate. (Audit Manual,
16 § 0405.20 (note that an actual basis audit can result in an increase in the measure of tax as well as a
17 decrease).) We find that no further adjustments are warranted.

18 **OTHER MATTERS**

19 None.

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