

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 DK SUPPLIES, INC., dba DK Beauty Supplies) Account Number: SR EA 100-549707
 6 Petitioner) Case ID 509933
 7 _____) Westminster, Orange County

8 Type of Business: Retailer of beauty supplies and equipment

9 Audit period: 04/01/06 – 03/31/09

10 <u>Item</u>	<u>Disputed Amount</u>
11 Disallowed claimed sales for resale	\$2,176,470
12 Tax as determined and protested	\$168,676.46
13 Interest through 02/29/12	56,914.09
14 Negligence penalty	<u>16,867.64</u>
15 Total tax, interest, and penalty	\$242,458.19
16 Payments	<u>- 1,167.49</u>
17 Balance Due	<u>\$241,290.70</u>
18 Monthly interest beginning 03/01/12	<u>\$ 977.14</u>

17 A Notice of Appeals Conference was mailed to petitioner's address of record, and the notice
 18 was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals
 19 conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the
 20 opportunity to provide any additional arguments and evidence in writing it wished us to consider, but it
 21 did not respond.

22 **UNRESOLVED ISSUE**

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

25 Petitioner sells beauty supplies and equipment. During the audit period, it reported total sales
 26 of \$2,547,701 and claimed that \$2,241,135 of those sales were not subject to tax. The Sales and Use
 27 Tax Department (Department) examined claimed sales for resale for the fourth quarter 2007 and
 28 determined that 83 percent of them were not supported by resale certificates. A substantial number of

1 these claimed sales for resale were sales to local nail shops, which generally purchase supplies for their
2 own use. The Department applied 83 percent to claimed sales for resale to establish the disallowed
3 amount at issue. Petitioner disputes the liability but has not provided specific reasons for its
4 disagreement with the audit. Petitioner has not provided timely, valid resale certificates in connection
5 with the disputed transactions or produced any other evidence to show that the sales were actually sales
6 for resale or that the tax was paid by the purchasers. Furthermore, the sales are the type that are
7 generally at retail. Accordingly, we find no adjustment is warranted.

8 **OTHER MATTERS**

9 The Department imposed a negligence penalty, which petitioner has not specifically protested.
10 Petitioner did not provide resale certificates to support the majority of its claimed nontaxable sales for
11 resale. We find that any businessperson, even one with limited experience, should be aware that it is
12 necessary to provide evidence to support claimed nontaxable sales, particularly when almost
13 90 percent of total sales are claimed as nontaxable. Petitioner's understatement by claiming
14 unsupported sales for resale that were determined to be retail sales resulted in an understatement of
15 taxable sales of \$2,176,470, which is more than 700 percent of reported taxable sales. We find that
16 these facts clearly support imposition of the negligence penalty, even though petitioner had not been
17 audited previously.

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