

**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: )  
DK SUPPLIES, INC., dba DK Beauty Supply ) Account Number: SR EA 100-549707  
Petitioner ) Case ID 509933  
Westminster, Orange County

Type of Business: Retailer of beauty supplies and equipment

Audit period: 04/01/06 – 03/31/09

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed sales for resale and netted sales	\$2,176,470
Tax as determined and protested	\$168,676.46
Interest through 11/30/12	65,167.05
Negligence penalty	<u>16,867.64</u>
Total tax, interest, and penalty	\$250,711.15
Payments	<u>- 1,000.00</u>
Balance Due	<u>\$249,711.15</u>
Monthly interest beginning 12/01/12	<u>\$ 838.38</u>

A Notice of Appeals Conference was mailed to petitioner's address of record, and was not returned by the Post Office. Petitioner did not respond or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the opportunity to provide any additional arguments and evidence it wished us to consider, but it did not respond. This matter was scheduled for Board hearing in February 2012, but was deferred at the request of the Sales and Use Tax Department (Department) and petitioner to allow time for petitioner to gather additional documentation (no additional documentation was provided). The matter was rescheduled for Board hearing in July 2012, but was postponed to allow petitioner additional time to prepare for the hearing. The appeal was rescheduled for hearing in September 2012, but petitioner requested that the hearing be postponed again. Although the request was initially denied, on the date of the scheduled hearing the Board agreed to grant a last postponement to the November calendar.

**UNRESOLVED ISSUE**

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

4 Petitioner sells beauty supplies and equipment of the type typically purchased by those engaged  
5 in the personal care service industry. For the second and third quarters 2006 (2Q06 and 3Q06), the  
6 first two quarters of the audit period, petitioner reported total sales of \$26,286 and claimed no  
7 deductions. The Department compiled bank deposits for those two quarters, net of sales tax included,  
8 of \$401,291, and it regarded the difference of \$375,005 as sales netted from reported total sales  
9 because petitioner believed them to be nontaxable or exempt. For the period October 1, 2006, through  
10 March 31, 2009, petitioner reported total sales of \$2,499,695 and claimed deductions of \$2,213,546 for  
11 sales for resale and, for 4Q06, \$5,869 for sales in interstate commerce. Thus, petitioner netted or  
12 claimed deductions totaling \$2,594,420 during the audit period ( $\$375,005 + \$2,213,546 + \$5,869$ ).

13 The Department examined claimed sales for resale for 4Q07 and determined that the claimed  
14 deduction included claimed sales for resale and claimed sales in interstate commerce. The Department  
15 found that the claimed exempt sales in interstate commerce were adequately supported by  
16 documentation, but that petitioner had no resale certificates to support claimed nontaxable sales for  
17 resale. Further, with the exception of one of the claimed nontaxable sales for resale, the Department  
18 was unable to verify the identity of the purchaser. Petitioner stated that a majority of its customers  
19 were nail shops and, since it believed that sales to nail shops were sales for resale, it did not realize it  
20 was necessary to request resale certificates. The Department concluded that the items petitioner sold to  
21 nail shops (such as nail polish, acrylic nail powders and liquids, lotions, and spa pedicure chairs)  
22 would generally be consumed by those shops in providing their services. However, the Department  
23 did contact the one purchaser whose identity it could verify from the records, which was a beauty  
24 supply store rather than a nail shop. Since the purchaser confirmed that the property had been  
25 purchased from petitioner for resale, the Department concluded that one sale was a valid nontaxable  
26 sale for resale, and that the remainder of petitioner's claimed nontaxable sales for resale for 4Q07  
27 should be disallowed.

1 In its test of the fourth quarter 2007, the Department computed that the one valid claimed sales  
2 for resale and the claimed exempt sales in interstate commerce represented 16.11 percent of  
3 petitioner's claimed sales for resale, with the remaining 83.89 percent representing disallowed claimed  
4 sales for resale. Thus, the Department concluded that 83.89 percent of netted sales and claimed  
5 deductions (\$2,594,420) should be disallowed as unsupported claimed sales for resale and 16.11  
6 percent should be allowed as nontaxable sales for resale and exempt sales in interstate commerce.  
7 Applying that ratio, the Department disallowed netted sales and claimed deductions of \$2,176,470.  
8 Petitioner disputes the liability but has not provided specific reasons for its disagreement with the audit  
9 (other than its originally stated belief that sales to nail shops would be for resale). Petitioner has not  
10 provided any timely, valid resale certificates. Further, when this matter was scheduled for hearing in  
11 February 2012, the Department requested that it be deferred in order to provide an opportunity for  
12 petitioner to send XYZ letters to its purchasers. The Department explained the XYZ letter process to  
13 petitioner, and despite petitioner's expression of interest in pursuing this process, it ultimately stated  
14 that it had no more documentation to provide. Thus, petitioner has not produced any evidence to show  
15 that the disallowed claimed nontaxable sales were actually sales for resale or that the tax was paid by  
16 the purchasers. Accordingly, we find no adjustment is warranted.

### 17 OTHER MATTERS

18 The Department imposed a negligence penalty, which petitioner has not specifically protested.  
19 Petitioner did not provide resale certificates or other evidence to support the vast majority of its  
20 claimed nontaxable sales for resale. We find that any businessperson, even one with limited  
21 experience, should be aware that it is necessary to provide evidence to support claimed nontaxable  
22 sales, particularly when almost 90 percent of total sales are claimed as nontaxable. Petitioner's  
23 understatement of \$2,176,470 caused by claiming unsupported sales for resale that were determined to  
24 be retail sales represents more than 700 percent of reported taxable sales. We find these facts clearly  
25 support imposition of the negligence penalty, even though petitioner had not been audited previously.

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