

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:)
D AND L WIRELESS, INC., dba Wireless CITI) Account Number: SR Y EA 100-452281
Petitioner) Case ID 535814
Huntington Beach, Orange County

Type of Business: Retailer of cellular phones
Liability period: 04/01/09 – 10/20/09

<u>Item</u>	<u>Disputed Amount</u>		
Negligence penalty	\$21,590		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$215,902.76	\$21,590.28
Less concurred		- 215,902.76	<u>00.00</u>
Balance, protested		<u>\$ 00.00</u>	<u>\$21,590.28</u>
Proposed tax redetermination		\$215,902.76	
Interest through 02/29/12		35,547.14	
Negligence penalty		<u>21,590.28</u>	
Total tax, interest, and penalty		\$273,040.18	
Payments		- 5,335.00	
Balance Due		<u>\$267,705.18</u>	
Monthly interest beginning 03/01/12		<u>\$ 1,228.31</u>	

UNRESOLVED ISSUE

Issue: Whether petitioner was negligent. We conclude that it was.

Petitioner was a retailer of cellular phones from August 16, 2004, through October 20, 2009.

The Sales and Use Tax Department (Department) conducted an audit of the period April 1, 2006, through March 31, 2009, and found that petitioner was reporting the selling prices it charged to customers when it made bundled sales of cellular phones, rather than the unbundled selling prices. For the audit period, the Department computed that petitioner's taxable sales were understated by 1,054.47 percent. When the seller's permit was closed out, the Department conducted a cursory review of the period at issue here and determined that petitioner had continued to make the same

1 reporting errors. Accordingly, for this liability period, the Department applied the 1,054.47 percent
2 error rate it had established in the audit to petitioner's reported taxable sales. The Department also
3 imposed a negligence penalty because the amount of understatement was substantial.

4 Petitioner does not dispute that understatement of reported taxable sales established by the
5 Department. However, it protests the negligence penalty on the basis that it made diligent efforts to
6 report its sales properly and that the unreported taxable sales were a result of misunderstanding of the
7 law, not negligence.

8 Although we acknowledge that the tax application to sales of cellular phones is complex,
9 petitioner had been audited for the three-year period immediately preceding this liability period. The
10 available evidence indicates that the Department discussed the audit findings with petitioner on
11 June 30, 2009, at which time they would have explained in detail the proper method of reporting sales
12 of cellular phones in bundled transactions. Petitioner filed its sales and use tax returns for the second
13 and third quarters of 2009 on July 24, 2009, and October 27, 2009, respectively. Accordingly, we find
14 petitioner was fully informed of the correct application of tax before it filed either of the returns for
15 this liability period, and we reject petitioner's argument that the understatement was due to a
16 misunderstanding of the law. We find that petitioner's failure to correct the errors found in the prior
17 audit and the exorbitant understatement are evidence that the understatement was the result of
18 negligence. Accordingly, we find that the penalty was properly applied.

19 **OTHER DEVELOPMENTS**

20 None.

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