

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

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3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)
5 DEANNA ROBINSON INTERIORS, INC.) Account Number: SR X EA 97-130375
6) Case ID 519485
7 Petitioner) Newport Beach, Orange County

8 Type of Business: Interior decorator

9 Audit period: 4/1/05 – 3/31/08

10 Item Disputed Amount

11 Negligence penalty \$21,929

| | <u>Tax</u> | <u>Penalty</u> |
|--------------------------------------|---------------------|--------------------|
| 12 | | |
| 13 As determined | \$219,294.52 | \$21,929.47 |
| 14 Less concurred | <u>-219,294.52</u> | <u>0.00</u> |
| 14 Balance, protested | <u>\$ 0.00</u> | <u>\$21,929.47</u> |
| 15 Proposed tax redetermination | \$219,294.52 | |
| 16 Interest through 7/31/12 | 111,970.55 | |
| 16 Negligence penalty | <u>21,929.47</u> | |
| 17 Total tax, interest, and penalty | <u>\$353,194.54</u> | |
| 18 Monthly interest beginning 8/1/12 | <u>\$1,096.47</u> | |

19 This matter was previously scheduled for Board hearing on February 1, 2012, but was
20 postponed at petitioner's request to allow additional time to prepare for the hearing.

UNRESOLVED ISSUE

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

23 Petitioner entered into contracts with its purchasers for interior decorating and the sale of
24 tangible personal property. Upon audit, the Sales and Use Tax Department (Department) found that
25 petitioner had recorded taxable sales of \$4,517,772 but had reported taxable sales of \$1,722,621, for a
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1 \$2,795,151 difference, which represented most of the total understatement of taxable sales of
2 \$2,829,606.¹ Petitioner does not dispute this deficiency.

3 The Department imposed the negligence penalty because petitioner failed to maintain adequate
4 books and records; the audit deficiency represents a 164.26 percent understatement; petitioner has
5 operated under this seller's permit since 1997; and had been audited previously. Petitioner asserts that
6 it exercised due care that a reasonable and prudent person would exercise in similar circumstances,
7 prepared its returns following the guidelines set forth in the Board's Interior Design Pamphlet, and did
8 not deliberately disregard its duty to keep adequate records in that the documents withheld from the
9 Department pertained to jobs marked incomplete at the time of the Department's request.

10 The business was previously operated by Deanna Robinson as a sole proprietor since 1977 (SR
11 EA 24-696454) and was incorporated in 1997. Thus, petitioner's principal has had over 30 years of
12 experience in this business, including the filing of sales and use tax returns. In petitioner's prior audit,
13 the Department assessed a negligence penalty. We conclude petitioner's continuation of the same
14 error from the prior audit constitutes negligence. We also find that the 164.26 percent error rate in
15 reporting sales is egregious and is strong evidence of negligence.

16 **OTHER DEVELOPMENTS**

17 None.

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19 Summary prepared by Pete Lee, Business Taxes Specialist II
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27 ¹ The D&R discusses petitioner's incorrect reporting of taxable sales based on delivery date (the sales should have been
28 reported based on when full payment had been made, which in many cases was long before delivery, because the explicit
provisions of the contracts of sale passed title upon full payment) as if this error were the primary reason for the deficiency.
In fact, only a small portion of the deficiency relates to this issue. As noted, almost all of the deficiency was actually the
result of petitioner's failure to report all its sales, in accordance with its own records.