

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION BOARD HEARING SUMMARY**

In the Matter of the Claim for Refund Under the Sales and Use Tax Law of:	)	
	)	
DOWNTOWN FORD SALES	)	Account Number SR KH 28-600344
	)	Case ID 522063
Claimant	)	Sacramento, Sacramento County

Type of Business:           Automobile dealership

Claim Period:               01/01/08 – 03/31/08

<u>Item</u>	<u>Claimed Refund</u>
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Relief of interest	\$6,418
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Claimant filed a claim for refund for interest of \$6,418.39, which had been paid because the payment due with the sales and use tax return for the first quarter 2008 (1Q08) was one day late.

**UNRESOLVED ISSUES**

**Issue 1:** Whether relief of interest is warranted. We find that relief is not warranted under Revenue and Taxation Code section 6593.5.

Claimant was required to pay its sales and use tax liabilities via the Sales and Use Tax Department's Electronic Funds Transfer (EFT) Automated Clearing House. With this method of payment, the payment is deemed complete on the date the EFT is initiated, if it is initiated by 3:00 p.m. Pacific time, and if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. For 1Q08, claimant did not contact the state's data collection service to initiate the EFT payment of \$700,018.80 until 6:09 on April 30, 2008, and the funds did not settle into the state's demand account until May 2, 2008, which was one day late. As a result, claimant incurred a late payment penalty of \$70,018.80 and interest of \$6,418.39. Claimant filed a request for relief of penalty, which the Department granted, and claimant paid the interest in full. It then filed a claim for refund of the interest paid. Also, after the conference, petitioner submitted a request for relief of interest signed under penalty of perjury.

1 Claimant requests relief of the interest on the basis that relief may be granted by the Board if a  
2 taxpayer's failure to pay timely is due to unreasonable error or delay, whether by an employee of the  
3 Board or the taxpayer. Claimant argues that Revenue and Taxation Code section 6593.5, subdivision  
4 (a)(1) can be construed in such a manner to support its argument. Alternatively, claimant does not  
5 concede that the payment was late, although it states it has no evidence to show otherwise.

6 Regardless of whether claimant concedes that the payment was late, it clearly was. Relief  
7 under Revenue and Taxation Code section 6593.5 is permitted only when the taxpayer's failure to  
8 make a timely return or payment was due to an unreasonable error or delay by *a Board employee*.  
9 (Rev. & Tax Code, § 6593.5.) Claimant's proposed interpretation of the statute, which would allow a  
10 taxpayer to be granted relief of interest due to its own unreasonable error, is not only clearly beyond  
11 the express provisions of subdivision (a)(2), it is also directly contrary to subdivision (b) which  
12 provides that relief is not warranted if any significant aspect of the error or delay was attributable to an  
13 act of, or a failure to act by, the taxpayer. Here, the entire error is attributable to claimant.  
14 Accordingly, there is no basis for relief under section 6593.5.

15 An alternative basis for reducing the applicable interest is provided by Revenue and Taxation  
16 Code section 6591.6, which permits *the Board Members meeting as a public body*, if they find it is  
17 inequitable to compute interest in the usual way, that is, for the entire month, to direct that interest be  
18 computed from the date on which the tax was due until the date of payment. Since the statute explicitly  
19 authorizes only the Board to make this finding in open session, we do not make a recommendation as to  
20 whether interest should be computed based on this alternative method. We note, however, that this case is  
21 eligible for the Board's consideration of whether to apply this alternative since: (1) the payment of tax  
22 was made one business day after the date the tax was due, (2) payment was made electronically, (3)  
23 relief of the late-payment penalty has been granted, and (4) claimant filed a request for an oral hearing  
24 before the Board.

### 25 OTHER MATTERS

26 None.

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