

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:)
ELITE CERT' AUTO SERVICE & TIRES, dba)
Elite Auto Service & Tires Inc.) Account Number SR EA 100-043894
Case ID 550595
Petitioner)
La Habra, Orange County

Type of Business: Tire dealer and auto repair shop
Audit period: 07/01/06 – 06/30/09

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$417,195
Unreported cost of self-consumed supplies	\$ 9,000
Tax as determined and protested	\$34,105.88
Interest through 07/31/12	<u>11,422.81</u>
Total tax and interest	<u>\$45,528.69</u>
Monthly interest beginning 08/01/12	<u>\$ 170.53</u>

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the unreported taxable sales. We find no adjustment is warranted.

Petitioner operates a Goodyear tire dealership and an auto repair shop. It prepared sales and use tax returns based on the total of its sales invoices, less estimated amounts of nontaxable sales for resale, nontaxable repair labor, and cash discounts. Petitioner provided incomplete records for audit.

The Sales and Use Tax Department (Department) established total sales based on its analysis of petitioner's three business bank accounts. It compiled total deposits of \$5,117,449, which it reduced by the documented amounts of transfers, deposits of funds from sources other than sales, and dishonored checks, to establish audited total sales of \$3,769,911. The Department then segregated the invoices for March 2009 into the various sales categories, and it computed that taxable sales represented 49.40 percent of total sales for the test month. The Department applied 49.40 percent to audited total sales to establish taxable sales of \$1,862,336, which exceeded reported amounts of \$1,445,141, by \$417,195. Petitioner contends the audited understatement is excessive because

1 additional adjustments should be made for refunds and loans included in the bank deposits and for
2 additional nontaxable sales for resale.

3 The Department has used a Board-approved audit method, which we find appropriate in this
4 case. The Department has made adjustments to audited total sales for all documented deposits of funds
5 from sources other than sales and has considered all substantiated nontaxable sales for resale in its
6 computation of the percentage of taxable to total sales. Accordingly, we find no adjustment is
7 warranted.

8 **Issue 2:** Whether adjustments are warranted to the unreported cost of self-consumed supplies.
9 We find no adjustment is warranted.

10 The Department noted that petitioner had not reported the cost of any supplies subject to use
11 tax. During the audit, petitioner estimated that the cost of self-consumed supplies averaged \$250 per
12 month. Since petitioner provided no invoices or other documentation that it had paid tax or
13 reimbursement to vendors on its purchases of shop supplies, and the Department concluded that shop
14 supplies were purchased ex-tax. The Department used petitioner's estimate to establish the audited
15 cost of self-consumed shop supplies subject to use tax of \$9,000 ($\250×36). Petitioner contends that
16 it paid sales tax reimbursement to local vendors with respect to all its purchases of shop supplies.

17 Petitioner has provided no invoices for its purchases of shop supplies. Accordingly, there is no
18 evidence that it paid sales tax reimbursement to vendors or even any evidence of the identity of the
19 vendors. In the complete absence of records regarding those purchases, we find the Department
20 reached a reasonable conclusion that petitioner purchased shop supplies ex-tax and that petitioner's
21 estimate should be used to establish the audited cost of such supplies.

22 **OTHER MATTERS**

23 None.

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