

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 FRONT PAGE COMMUNICATIONS, INC. ) Account Number: SR AA 97-527716  
 ) Case ID 361961  
 6 Petitioner ) Paramount, Los Angeles County

7 Type of Business: Sales and installation of television satellite equipment

8 Audit period: 04/01/01 – 12/31/04

9 <u>Item</u>	<u>Disputed Amount</u>
10 Unreported measure	\$1,218,747
Relief of interest	\$ 65,661
11 Amnesty interest penalty	\$ 5,200
12 Tax as determined:	\$100,347.98
Adjustment - Appeals Division	<u>-453.27<sup>1</sup></u>
13 Proposed redetermination, protested	<u>\$99,894.71</u>
14 Proposed tax redetermination	\$99,894.71
Interest through 12/31/10	65,661.03
15 Amnesty interest penalty	<u>5,199.64</u>
16 Total tax, interest, and penalty	\$170,755.38
Payments	<u>-35.63</u>
17 Balance Due	<u>\$170,719.75</u>
18 Monthly interest beginning 1/1/11	<u>\$582.51</u>

19 This matter was previously scheduled for Board hearing on October 21, 2010, but was  
 20 postponed at the request of petitioner's representative due to a scheduling conflict.

## 21 UNRESOLVED ISSUES

22 **Issue 1:** Whether adjustments are warranted to the amount of unreported sales. We  
 23 recommend no further adjustments.

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 26 <sup>1</sup> In the D&R, we found that petitioner was the consumer of materials, and thus recommended a reaudit to reduce the  
 27 measure of tax due with respect to petitioner's consumption of materials to cost (i.e., the reaudit was to delete the markup  
 28 with respect to the materials, only). The resulting reaudit reduced the measure of tax by \$17,624.68. However, in  
 preparation for the Board hearing, we discovered that the reaudit had incorrectly reduced the measure of tax with respect to  
 all property to cost. The correction of that error reduced the amount of the adjustment.

1           Petitioner sells and installs television satellite equipment, and it entered into a sales agency  
2 agreement (consumer sales agreement) with DirecTV in November 1997. This contract appears to  
3 relate exclusively to equipment and programming package subscriptions for single-family dwellings.  
4 The introductory paragraph states petitioner operates a retail business selling, installing, and  
5 maintaining satellite equipment. The contract further states petitioner conducts the equipment sales  
6 and installation business for its own account only and not as the agent for DirecTV. Moreover,  
7 paragraph 18.11 places responsibility for sales tax squarely with petitioner. In July 1999, petitioner  
8 entered into a commercial dealer agreement with DirecTV, which authorized petitioner to sell  
9 programming package subscriptions to commercial establishments. Similar to the sales agency  
10 agreement, the commercial dealer agreement states that DirecTV had no responsibility whatsoever in  
11 connection with the equipment and that petitioner was an independent contractor. Paragraph 4.11.1  
12 states petitioner shall perform all actions “including ... collection of sales ... taxes ....” In October  
13 1997 and again in July 2003, petitioner provided a blanket resale certificate to DirecTV’s sales  
14 management agent, DSI Distributing (DSI), stating, in part, that petitioner was doing business as a  
15 retailer. Petitioner ordered satellite equipment, including receivers, digital video recorders, dish  
16 antennae, cable, wire, connectors, and other consumables, as well as other electronic appliances such  
17 as televisions, refrigerators and related items, from DSI.

18           A potential customer might have contacted petitioner directly, or if first contacting DirecTV,  
19 would have been referred to petitioner. Petitioner then made contact with the customer to install and  
20 set up the equipment after the customer signed a Satellite Application under petitioner’s name (copies  
21 attached as exhibit 4 to the D&R). As explained in the D&R, DirecTV apparently collected all  
22 amounts due (that is, both for the equipment sold by petitioner and for satellite services provided by  
23 DirecTV), and remitted petitioner’s portion to petitioner.

24           During the audit, the Sales and Use Tax Department (Department) noted substantial differences  
25 between reported sales and the cost of equipment purchased for resale. The Department concluded  
26 petitioner was selling bundled transactions and, using California Code of Regulations, title 18, section  
27 (Regulation) 1585 as a guide, found that sales tax was due on the selling price of equipment included  
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1 in the bundled price.<sup>2</sup> The Department ascertained that petitioner informed its customers they would  
2 be charged \$155 per unit in the event they failed to subscribe to DirecTV programming within a stated  
3 period of time after installation of the equipment. The Department regarded \$155 as the “unbundled  
4 price,” and it compared that amount to cost to compute a markup of 19.03 percent. Then, to establish  
5 the audited sales for 2002 and 2003, the Department applied a markup factor of 1.1903 to the recorded  
6 purchases. Since purchase invoices were not available for 2001 or 2004, the Department computed  
7 average quarterly sales for the last three quarters of 2001 and the year 2004 using the sales information  
8 for 2002 and 2003.

9         Petitioner contends it was not the retailer of the satellite equipment. In essence, petitioner  
10 claims that customers purchased equipment from DirecTV and that petitioner only held the equipment  
11 on behalf of DirecTV until its delivery of the equipment to the customer as the agent of DirecTV. As  
12 support, petitioner provided a copy of a September 14, 2007 internal memorandum from the  
13 Department regarding a different matter which, according to petitioner, reached a different result.<sup>3</sup>  
14 Petitioner also alleges that the audited amount of taxable sales is excessive. Regarding paragraph  
15 18.11 of the consumer sales agreement, petitioner claims that its obligation to collect sales tax  
16 reimbursement from its customers was never triggered because DirecTV never gave it the correct rate  
17 as required by that provision.

18         It was petitioner who actually contracted with the customer (in its own name per the Satellite  
19 Application) for the sale of the equipment, and thus it is clear that petitioner was the retailer of the  
20 equipment to the customers with whom it contracted.<sup>4</sup> That the parties agreed that DirecTV would  
21 collect all amounts due, including for the sale of the equipment, and remit petitioner’s portion to  
22 petitioner does not alter the fact that petitioner had made the retail sales of equipment. We note that  
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24 <sup>2</sup> Although Regulation 1585 applies expressly to wireless telecommunication equipment and there is no specific regulation  
25 that governs satellite television equipment, the way petitioner sold the equipment is substantially similar to the way bundled  
26 wireless telecommunication equipment is sold. Accordingly, we find the Department’s reference to Regulation 1585 to  
27 establish the deficiency here is reasonable.

28 <sup>3</sup> Petitioner has not argued that the deficiency is due to its reasonable reliance on erroneous written advice and, in any event,  
we note that the memorandum related to an entirely different taxpayer and find that it does not provide any basis for relief.

<sup>4</sup> As noted above, we found that petitioner was the consumer of materials such as cable and connectors that it furnished and  
installed, and this reduced the deficiency by the amount of the markup the Department calculated with respect to those  
materials. Petitioner owes tax on the cost of those materials without regard to whether it sold the other property to the  
customers at retail (as we find) or was selling the other property to DirecTV for resale (which we reject).

1 this conclusion is consistent with petitioner's having purchased the equipment under a resale  
2 certificate, and with the terms of the agreement between petitioner and DirecTV. That agreement  
3 states that petitioner operated a retail business selling satellite equipment, that petitioner conducted the  
4 equipment sales and installation business for its own account only and not as an agent for DirecTV,  
5 and that petitioner was responsible for sales tax. Since petitioner has not provided evidence to support  
6 any adjustment other than as noted above, we recommend no further adjustments.

7 **Issue 2:** Whether relief of interest is warranted. We find no basis for relief.

8 Petitioner submitted a Request for Relief of Penalty, signed under penalty of perjury, which  
9 requests relief from penalties assessed for the period January 1, 2000, to the present, stating that the  
10 audit issue has yet to be resolved "due in large part to delays by the Board of Equalization." We have  
11 asked petitioner on at least two occasions to submit arguments and evidence to support its request for  
12 relief, but have received no response. In the absence of clarification and in an abundance of caution,  
13 we have treated this request as one for relief of all interest imposed (since the audit period begins  
14 April 1, 2001, more than a year after the date specified in the request), based on unreasonable delay,  
15 under Revenue and Taxation Code section 6593.5.

16 Some of the delays in processing this case were the result of actions by petitioner, and some of  
17 the delays were the result of an unforeseen and unavoidable series of retirements and transfers in the  
18 Appeals Division during the pendency of the appeal. Our review of the chronology of this case reveals  
19 that the Appeals Division acted promptly to reassign the matter after each departure (or conduct  
20 another conference when requested), and the new attorney in each case acted diligently, considering  
21 existing workloads, to process the appeal. In order to grant relief of interest, Revenue and Taxation  
22 Code section 6593.5, subdivision (a)(1), requires evidence of "an unreasonable error or delay by an  
23 employee of the Board acting in his or her official capacity." We do not believe the delay in this  
24 matter was unreasonable under the circumstances. Therefore, we find no basis to recommend relief of  
25 interest and recommend that relief be denied.

## 26 AMNESTY

27 Since petitioner did not apply for amnesty or pay the amnesty-eligible tax and interest by  
28 March 31, 2005, an amnesty interest penalty will be added when the liability becomes final. After the

1 reaudit recommended in the D&R, the amount of that penalty is \$5,199.64. Again, in an abundance of  
2 caution, we treat petitioner's request for relief as covering this penalty. However, the statements in the  
3 request do not relate specifically to petitioner's failure to participate in the amnesty program, and  
4 petitioner has not responded to our requests for clarification. We find that petitioner has not stated a  
5 basis for relief of the amnesty interest penalty, and therefore recommend that relief be denied.

6 **OTHER DEVELOPMENTS**

7 None.

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9 Summary prepared by Rey Obligacion, Retired Annuitant

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**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentage developed (tangible personal property sold, excluding materials used by petitioner to install the equipment)	19.03%
Self-consumption allowed in dollars	None
Pilferage allowed in dollars	None