

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 PAUL GLASSON, dba P. M. Enterprises) Account Number: SR CH 97-526164
) Case ID 482541
 6 Petitioner) Dublin, Alameda County

7 Type of Business: Used car dealership

8 Audit period: 10/01/02 – 09/30/05

9 Item Disputed Amount

10 Disallowed claimed nontaxable sales \$312,206
 11 Unreported sales \$609,132

	<u>Tax</u>	<u>Penalty</u>
12 As determined:	\$89,880.94	\$9,231.16
13 Adjustment - Appeals Division	<u>- 956.16</u>	<u>-9,231.16</u>
14 Proposed redetermination	\$88,924.78	<u>\$ 00.00</u>
15 Less concurred	<u>-12,221.06</u>	
16 Balance, protested	<u>\$76,703.72</u>	
17 Proposed tax redetermination	\$ 88,924.78	
Interest through 7/31/11	<u>54,609.01</u>	
18 Total tax and interest	<u>\$143,533.79</u>	
19 Monthly interest beginning 8/1/11	<u>\$ 444.62</u>	

20 This matter was previously scheduled for Board hearing on January 27, 2011, but was
 21 postponed at petitioner's request to allow additional time to prepare for the hearing. The matter was
 22 rescheduled for Board hearing on May 25, 2011, but petitioner did not respond to the Notice of
 23 Hearing, so the Board Proceedings Division informed petitioner that this matter would be presented to
 24 the Board for decision without oral hearing. Petitioner subsequently submitted his response to the
 25 Notice of Hearing, and the matter has been rescheduled for Board hearing.

26 UNRESOLVED ISSUES

27 **Issue 1:** Whether adjustments are warranted to the disallowed claimed nontaxable sales. We
 28 recommend no adjustment.

Petitioner operates a used car dealership, making retail sales, nontaxable sales for resale, and
 exempt sales in interstate commerce. The Sales and Use Tax Department (Department) examined

1 petitioner's claimed deductions for nontaxable sales for resale (which also included claimed exempt
2 sales in interstate commerce) for the second quarter 2004 and first quarter 2005. The Department
3 found four sales that had been recorded as exempt sales in interstate commerce for which petitioner did
4 not provide sufficient supporting documentation. The Department disallowed those four claimed
5 exempt sales and computed that, for the two-quarter test period, the claimed nontaxable sales were
6 overstated by 53.34 percent. The Department applied that percentage to the remainder of the audit
7 period and computed an overstatement of claimed nontaxable sales of \$312,206.

8 Petitioner contends that each of the disallowed claimed nontaxable sales were actually
9 nontaxable sales of vehicles delivered to purchasers outside California, for use outside California. In
10 addition, petitioner contends that he should not be held responsible for the sales tax with respect to the
11 sales in question because he does not believe he was required to collect sales tax reimbursement from
12 his customers, and because the purchasers were required to pay tax on their purchases when they
13 registered the vehicles in their respective states or country.

14 Petitioner has provided forms BOE-447, completed by the purchasers, which indicate that the
15 vehicles were purchased for use outside California. He has also provided evidence that the vehicles
16 were registered in other states or another country shortly after the dates of sale. However, petitioner
17 has not provided sales contracts, and there is no documentation that any of the vehicles were required,
18 by contract, to be shipped outside this state. Further, petitioner has not provided evidence that any of
19 the vehicles were actually shipped or delivered to a point outside California. Since petitioner has
20 failed to establish out-of-state delivery with respect to any of the vehicles, we conclude that the sales
21 occurred in California, and that they are subject to sales tax. As such, it is irrelevant whether the
22 purchasers were required to pay tax when the vehicles were registered outside California. We note
23 that, as far as we know, all states give a credit against their use tax for any other state's tax or tax
24 reimbursement the purchaser properly paid when purchasing the subject property, and it appears likely
25 that the only reason another state would have imposed its full use tax on the purchaser is that petitioner
26 did not collect sales tax reimbursement on the sale. However, the sales tax is imposed on petitioner, as
27 the retailer (Rev. & Tax. Code § 6051), and petitioner owes that sales tax without regard to whether it
28 collected sales tax reimbursement from its purchaser pursuant to Civil Code section 1656.1.

1 **Issue 2:** Whether adjustments are warranted to the audited unreported sales. We recommend
2 no adjustment.

3 The Department compared total sales reported on sales and use tax returns to the gross receipts
4 reported on income tax returns, adjusted for various amounts not included in total sales for sales and
5 use tax purposes, and computed a difference of \$706,504 for the period January 1, 2003, through
6 September 30, 2005. Petitioner contends that the amount of taxable sales included in this difference
7 should be reduced by \$609,132, to \$97,372. The \$609,132 consists of \$234,812, which petitioner
8 asserts are receipts from 18 sales for which he was not the seller since he merely found purchasers for
9 the vehicles in exchange for a \$200 to \$400 fee paid by the sellers, and \$374,320, which petitioner
10 asserts is the total amount of nontaxable sales for resale to Manheim, a wholesale vehicle auction
11 company.

12 The Department has used the amounts reported on petitioner's income tax returns, after
13 adjustments for sales tax included, DMV fees, charges for optional warranties, and overdraft deposits
14 to establish the audited amount of total sales. We note that petitioner has not provided the source
15 documents, such as a detailed sales journal, to show how he arrived at the amounts of gross income
16 reported on his income tax returns. With respect to the sales of \$234,812 for which petitioner asserts
17 he was not the seller, if petitioner really believed he was not the seller and that he was solely receiving
18 fees from these other sellers, we believe it likely he would not have reported the entire sale price as
19 part of his gross income and would have instead reported only the actual fee received. Nor has
20 petitioner provided evidence to substantiate that the \$234,812 he claims were receipts from sales
21 actually made by other sellers was included in the amounts reported on his income tax returns. Thus, if
22 petitioner's argument were valid, we believe the amount at issue would be the fees he allegedly
23 received (that is, between \$3,600 and \$7,200), not the entire \$234,812. In any event, petitioner has not
24 provided documentary evidence to show that any nontaxable fees of this type were included in his
25 reported gross income, nor has he established that he was not the retailer liable for sales tax on such
26 transactions.

27 Regarding the \$374,320 identified by petitioner as 43 nontaxable sales of vehicles for resale to
28 Manheim, since petitioner has not provided the source documents to show how he arrived at the

1 amounts of gross income reported on his income tax returns, we cannot trace these alleged Manheim
2 transactions to, or conclude with certainty that they are included in, the gross income amounts reported
3 on petitioner's income tax returns. Further, upon preparation of this case for Board hearing, we
4 noticed that petitioner's computations draw from two separate lists of transactions, one that identifies
5 petitioner as the buyer and one that identifies petitioner as the seller. Therefore, petitioner's allegation
6 that he was the seller in all of these Manheim transactions is not fully supported. Petitioner has not
7 established that he is entitled to an additional \$374,320 deduction for sales for resale. Accordingly, we
8 find no adjustment is warranted for nontaxable sales.

9 **RESOLVED ISSUES**

10 The audit included unreported sales of fixed assets of \$11,614. Based on additional
11 documentation provided at the conference, the Department concluded that this amount represented
12 sales of stocks rather than sales of fixed assets. Therefore, we find that the \$11,614 did not represent
13 taxable sales of tangible personal property, and we recommend that amount be deleted from the
14 audited understatement of reported taxable measure.

15 The Department imposed a negligence penalty, and since petitioner did not participate in the
16 amnesty program and the Notice of Determination was issued to petitioner after that program's end,
17 the determination also included an amnesty double negligence penalty. Petitioner's records were not
18 adequate for sales and use tax purposes and petitioner has failed to produce evidence to substantiate a
19 significant percentage of the claimed nontaxable or exempt sales. However, petitioner did provide
20 various source documents, including DMV Report of Sale books, dealer jackets, sales invoices, and
21 contracts. Petitioner's error ratio of 38.5 percent is significant but appears to have resulted in large
22 part from his inadequate record keeping. Since this was petitioner's first audit, the D&R generously
23 gives petitioner the benefit of doubt and recommends that the negligence penalty be removed, which
24 means that the amnesty doubled negligence penalty is also removed.

25 Since petitioner did not participate in the amnesty program, an amnesty interest penalty of
26 \$206.58 will be added when the liability becomes final. Petitioner has submitted a properly completed
27 request for relief of the amnesty interest penalty. We find that that the audited understatement was
28 primarily the result of petitioner's misunderstanding of proper recordkeeping requirements. Since the

1 Department did not contact petitioner regarding the audit in question until several months after the
2 deadline to apply for amnesty, we accept that petitioner had a good faith belief that he had not
3 understated his liability for the amnesty period. We therefore recommend that the amnesty interest
4 penalty be relieved if, within 30 days from the Notice of Redetermination, petitioner pays the amnesty-
5 eligible taxes and interest in full or enters into a qualifying installment payment agreement to pay the
6 amnesty-eligible tax and interest within 13 months, and successfully completes that agreement.

7 **OTHER DEVELOPMENTS**

8 None.

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10 Summary prepared by Pete Lee, Business Taxes Specialist II

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