

**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: )  
HOUSEWARES INTERNATIONAL, INC ) Account Number: SR AA 97-576870  
Petitioner ) Case ID 464830  
City of Commerce, Los Angeles County

Type of Business: Seller of household items

Audit period: 10/1/04 – 09/30/07

<u>Item</u>	<u>Disputed Amount</u>
Samples withdrawn from inventory	\$97,502
Tax determined and protested	\$8,044.00
Interest	<u>2,420.38</u>
Total tax and interest	\$10,464.38
Payments	<u>-10,464.38</u>
Balance Due	<u>\$ 0.00</u>

A Notice of Appeals Conference was mailed to petitioner’s address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the opportunity to provide any additional arguments and evidence in writing it wished us to consider, but it did not respond, and we thus issued the D&R without further input from petitioner. This matter was then scheduled for Board hearing on June 23, 2011, but was postponed because petitioner’s representative was ill and needed more time to prepare.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner has established that the cost of samples withdrawn from inventory is overstated. We conclude that it has not.

Petitioner purchased sample items from a retailer, issued a resale certificate at the time of purchase, and placed the items into resale inventory. Subsequently, petitioner used some of this inventory as samples given away, for replacement of damaged products, and for demonstration and display while held for resale in the regular course of business. Petitioner maintained a “samples

1 account” in its general ledger to record the cost of such inventory withdrawals, but did not maintain a  
2 record to document how the items charged to the samples account were specifically used. However,  
3 petitioner provided the following estimates: 50 percent were given away to out-of-state customers,  
4 20 percent were given away to out-of-state sales representatives, 20 percent were placed in showrooms  
5 for demonstration and display while being held for sale in the regular course of business, 5 percent  
6 were given away to in-state customers and sales representatives, and 5 percent were used to replace  
7 damaged products.

8 The Sales and Use Tax Department (Department) noted that petitioner recorded \$129,999 in the  
9 samples account during the audit period, and concluded that petitioner made a taxable consumption of  
10 the products given away to out-of-state and in-state customers and sales representatives. Using  
11 petitioner’s estimates, the Department reduced the \$129,999 in the samples account by 20 percent,  
12 \$26,000, for demonstration and display and by 5 percent, \$6,500, for replacement of damaged  
13 products, to compute the \$97,502 cost of samples given away subject to use tax (\$3 difference due to  
14 rounding). Petitioner contends this amount is overstated, but did not elaborate in its petition, attend the  
15 appeals conference, or provide post-conference submissions to further articulate its contention.

16 If property purchased under a resale certificate is stored or used for any purpose other than  
17 retention, demonstration or display while holding it for sale, the storage or use is taxable. Making a  
18 gift of property to others is such a use. A person who transfers property without receiving any  
19 consideration is the consumer of that property for purposes of application of the sales and use tax.  
20 Petitioner does not dispute that it made a taxable consumption of samples given away. Rather, it  
21 contends that the amount of taxable samples computed by the Department is overstated. However, the  
22 Department used petitioner’s own estimates, and petitioner has not shown that the Department’s  
23 calculations overstate the measure of tax. We conclude no adjustment is warranted.

#### 24 **OTHER DEVELOPMENTS**

25 None.

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27 Summary prepared by Pete Lee, Business Taxes Specialist II  
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