

**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: )  
HYE OCK IM, dba ) Account Number: SR AA 101-002406  
Snow White Wedding Shop ) Case ID 435812  
Petitioner ) Artesia, Los Angeles County

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In the Matter of the Administrative Protest )  
Under the Sales and Use Tax Law of: )  
PYUNG SOON IM ) Account Number: SR AA 53-003538  
Taxpayer ) Case ID 446413  
Artesia, Los Angeles County

Type of Business: Dress shop  
Audit period: 7/1/03 – 6/30/06 (435812)  
Liability period 7/1/04 – 6/30/06 (446413)

<u>Item</u>	<u>Disputed Amount</u>			
			<u>435812</u>	
	Tax	Penalty		
			<u>446413</u>	
	Tax	Penalty	Tax	Penalty
Unreported dressmaking labor	\$22,620 (435812); \$15,103 (446413)			
Unreported alteration labor	\$81,249 (435812); \$54,242 (446413)			
As determined	\$15,326.28	\$1,532.64	\$10,160.37	\$1,016.04
Adjustment - Sales and Use Tax Department	-2,107.61		-1,407.04	
- Appeals Division	<u>-1,602.15</u>	<u>-1,532.64</u>	<u>-1,069.51</u>	<u>-1,016.04</u>
Proposed redetermination/adjusted determination	\$11,616.52	<u>\$ 0.00</u>	\$ 7,683.82	<u>\$ 0.00</u>
Less concurred	<u>3,047.33</u>		<u>1,962.86</u>	
Balance, protested	<u>\$ 8,569.19</u>		<u>\$ 5,720.96</u>	
Proposed redetermination/adjusted determination	\$11,616.52		\$ 7,683.82	
Interest through 10/31/11	<u>6,353.19</u>		<u>3,918.67</u>	
Total tax and interest	<u>\$17,969.71</u>		<u>\$11,602.49</u>	
Monthly interest beginning 11/1/11	<u>\$58.08</u>		<u>\$38.42</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether further adjustments are warranted to the audited measure of unreported fabrication labor for making dresses. We conclude no further adjustments are warranted.

1           Petitioner fabricates new, custom-made wedding dresses and other clothing from customer-  
2 furnished materials, makes alterations of new and used clothes, and offers tuxedo rentals.<sup>1</sup> Petitioner  
3 indicated that it reported its sales activity based on bank deposits. Upon audit, petitioner provided very  
4 limited records: bank statements for the audit period except for October 2005, sales invoices for  
5 fabrication of dresses and alterations for June 2006, and federal income tax returns for 2003 through  
6 2005. The Department found that petitioner did not report any taxable fabrication labor for making  
7 dresses or for alterations, but reported only taxable tuxedo rental receipts.

8           The Department computed petitioner's taxable sales based on a bank deposit analysis which,  
9 after allowing for non-sale deposits, resulted in \$201,312 gross receipts for the audit period. Based on  
10 canceled checks issued to the tuxedo supplier, the Department calculated that petitioner purchased 185  
11 tuxedo rentals costing \$45 each without payment of tax reimbursement, added an \$18 markup to each  
12 tuxedo rental, computed audited taxable tuxedo rental receipts of \$11,655, compared that amount with  
13 the \$6,928 reported taxable rental receipts for the audit period, and established unreported taxable  
14 tuxedo rental receipts of \$4,727. Next, the Department subtracted the audited taxable tuxedo rental  
15 receipts from the audited gross receipts and computed \$189,857 as the gross receipts from dress  
16 making and alterations. On March 6, 2008, the Department observed all of the garment alteration jobs  
17 in petitioner's business, and determined that 60.26 percent of petitioner's alterations were to new  
18 clothes. Petitioner subsequently provided additional sales invoices for January through May 2006, and  
19 worksheets that included monthly and yearly totals of receipts for the categories of tuxedo rentals,  
20 dress making, and alterations for July 2003 through June 2006. The Department examined the sales  
21 invoices for the period January through June 2006 and determined that 28.91 percent of petitioner's  
22 sales related to dress making and 71.09 percent related to alterations. The Department applied the

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24 <sup>1</sup> This business was originally operated under a seller's permit (SR AA 99-721188) obtained in June 1995 by Marvin Im.  
25 The Sales and Use Tax Department (Department) discovered that Marvin Im's mother and father, Hye Ock Im and Pyung  
26 Soon Im, became co-owners of the business prior to the start of the audit period. Ms. Im obtained seller's permit SR AA  
27 101-002406 for the business as a sole proprietor effective July 1, 2003, which is apparently the reason the Department  
28 initially issued a determination only to her for the audit period July 1, 2003, through June 30, 2006. When the Department  
issued the dual determination to Mr. Im, the first year of the audit period, July 1, 2003, through June 30, 2004, was barred  
by the statute of limitations, so the determination issued to him does not include the amounts that had been determined to  
Ms. Im for the first year of the audit period. (The Department assigned account SR AA 53-003538 to Mr. Im for the  
purpose of issuing the dual determination.) Mr. Im does not deny that he is a co-owner of the business, and we refer to the  
business owned by Mr. and Ms. Im as petitioner.

1 60.26 percent new clothing alteration percentage to the 71.09 percentage of gross receipts related to  
2 alterations to calculate 42.84 percent as the taxable alteration percentage. Thus, for the audit period,  
3 the unreported taxable dress making charges were \$54,830 ( $\$189,857 \times 28.91$  percent), the unreported  
4 taxable alteration charges were \$81,249 ( $\$189,857 \times 42.84$  percent), and the understated taxable  
5 tuxedo rental charges were \$4,727. Ms. Im's determination includes this entire deficiency for the  
6 three-year audit period, while Mr. Im's determination, which covers the last two years of the audit  
7 period, includes unreported taxable dress making charges of \$36,605, unreported taxable alteration  
8 charges of \$54,242, and understated taxable tuxedo rental receipts of \$2,290.

9         Petitioner contends that the breakdown of its gross receipts is 16 percent for dress making,  
10 76 percent for alterations, and 7.5 percent for tuxedo rentals. Petitioner contends that June 2006 (the  
11 sample period used in the original audit) is not a representative month to use as a test period for its  
12 dress making business because the late spring and summer months are high season for wedding and  
13 prom dresses, and that such use resulted in an overstatement of its taxable sales.

14         There are inconsistencies in petitioner's worksheets, and based on its limited review of May  
15 2005 and June 2006 sales invoices, the Department identified and adjusted several posting errors made  
16 by petitioner. It compared the adjusted recorded charges for dress making on petitioner's worksheet of  
17 \$25,079 with recorded total labor charges of \$107,612 for 2004, 2005, and January through June 2006,  
18 and computed a 23.31 percent dress making percentage. Petitioner has not disputed the adjustments  
19 that the Department made to its worksheet, meaning that petitioner's own records show a dress making  
20 percentage well in excess of the 16 percent claimed by petitioner. The Department performed other  
21 computations detailed in the D&R that support the percentage of dress making used by the  
22 Department, and refutes the 16 percent asserted by petitioner.

23         The Department indicated that petitioner also makes all types of formal wear including cocktail  
24 dresses, evening gowns, and dresses for birthdays. We observed that petitioner's dress making charges  
25 for June 2006 include orders for six custom dresses, two wedding dresses, one bridesmaid dress, and  
26 two flower girl dresses; and there is no evidence that any of the custom dress orders were for prom  
27 dresses. Petitioner has not provided evidence which shows that the dress orders for June 2006 are  
28 more heavily weighted toward wedding and prom dresses than its normal sales activity. We find that

1 the evidence provided does not support petitioner's contention that wedding-related and prom dress  
2 orders occur more frequently in June. Further, we note that the current audited measure of tax for  
3 dress making is not based on a projection of solely June 2006 test results. As indicated above, the  
4 28.91 percent dress making percentage was established from an examination of petitioner's sales  
5 invoices for the period January through June 2006. We conclude that this six-month test of recorded  
6 dress making charges is a representative sample of petitioner's overall gross receipts. We find no  
7 adjustment is warranted to the audited understatement of dress making charges.

8 **Issue 2:** Whether further adjustments are warranted to the audited measure of unreported  
9 fabrication labor for alterations to new clothes. We conclude no further adjustments are warranted.

10 Petitioner contends that Regulation 1524 does not apply to the clothing alteration portion of its  
11 business because it was neither the fabricator nor the retailer of the garments it altered, that the term  
12 "new clothing" in Regulation 1524 is not clearly defined, and that it was an undue burden for petitioner  
13 to distinguish if a piece of clothing was or was not "new."

14 Regulation 1524 specifically states that charges for alterations to new clothing are subject to tax  
15 regardless of whether the alterations are performed by the seller of the clothing *or by another person*.  
16 We conclude that Regulation 1524 applies to petitioner's charges for alterations of new clothing. We  
17 note that during the Department's observation test, most of the clothing to be altered had either a price  
18 tag or a button bag attached, or had a fold line or crisp collar. We believe that these clues and  
19 characteristics are strong and easily recognizable indications that the clothing had been recently  
20 purchased and had not been worn. Thus, in most cases there appears to be evidence readily available  
21 to assist petitioner in determining whether a piece of clothing to be altered is or is not new. Petitioner  
22 did not dispute the audit methodology used to determine this audit item. Accordingly, we do not  
23 recommend any further adjustments.

#### 24 **OTHER DEVELOPMENTS**

25 None.

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27 Summary prepared by Pete Lee, Business Taxes Specialist II  
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