

**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: )  
JI MEDICAL, INC., dba Ramat Medical ) Account Number SR AS 97-909373  
Petitioner ) Case ID 562873  
Los Angeles, Los Angeles County

Type of Business: Sales of medical equipment and supplies

Audit period: 01/01/01 – 12/31/03

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales of fixed assets	\$160,494
Amnesty interest penalty	\$ 2,328
Tax as determined and proposed to be redetermined	\$20,879.44
Less concurred	<u>- 7,637.11</u>
Balance, protested	<u>\$13,242.33</u>
Proposed tax redetermination	\$20,879.44
Interest through 08/31/13	19,221.69
Amnesty interest penalty	<u>2,327.98</u>
Total tax, interest, and penalty	\$42,429.11
Payments	<u>- 154.00</u>
Balance Due	<u>\$42,275.11</u>
Monthly interest beginning 09/01/13	<u>\$ 103.63</u>

A Notice of Appeals Conference was mailed to petitioner's address of record, with a copy to its representative. Petitioner's representative responded that he was waiving his appearance at the conference.

**UNRESOLVED ISSUES**

**Issue 1:** Whether a sale of fixed assets of \$160,494 is subject to tax. We find that the sale is subject to tax.

Petitioner has been selling medical equipment since January 2001. During the audit, the Department reviewed a depreciation schedule filed with petitioner's 2001 federal income tax return and noted a sale of fixed assets (machinery and equipment) for \$160,494 on September 28, 2001. Although petitioner reported total sales of about \$2.6 million for 2001, it claimed all sales as exempt

1 from sales tax. Since petitioner did not provide documentation that that sale of fixed assets was a  
2 nontaxable sale, the Department concluded that the sale was an unreported taxable sale.

3 Petitioner contends that the sale of fixed assets is not subject to sales tax but has not provided  
4 any supporting evidence or arguments, even though we specifically requested additional information in  
5 a post-conference letter. Based on the available evidence, we find that petitioner sold fixed assets that  
6 were held or used by petitioner in the course of the business activities for which it holds a seller's  
7 permit. Petitioner's gross receipts from its sales of tangible personal property are presumed to be  
8 subject to tax (Rev. & Tax. Code, § 6091), and petitioner has not met its burden of proving to the  
9 contrary. Accordingly, we find petitioner's sale of fixed assets is subject to tax.

10 **Issue 2:** Whether relief of the amnesty interest penalty is warranted. We find relief is not  
11 warranted.

12 Since petitioner did not participate in the amnesty program, an amnesty interest penalty of  
13 \$2,327.98 will be added when the determination becomes final. Petitioner requests relief from the  
14 penalty on the basis that it did not pay the amnesty-eligible tax or file amended returns for the  
15 amnesty-eligible period because it believed it did not owe additional tax. Petitioner notes that, by the  
16 time the liability was disclosed by audit, the period for filing for amnesty had expired.

17 Based on the available evidence, which includes a letter sent to petitioner February 4, 2005, we  
18 find petitioner was aware of the amnesty program prior to the deadline for filing for amnesty, and  
19 petitioner does not contend otherwise. Although petitioner asserts that it believed it had no amnesty-  
20 eligible liability, we find petitioner should have known that the sale of fixed assets at issue, as well as  
21 the purchase of fixed assets petitioner purchased without payment of tax or tax reimbursement, were  
22 subject to tax, absent evidence to the contrary. Thus, we find petitioner did not exercise ordinary care  
23 in reporting for the amnesty-eligible period and has not shown that its failure to report all of its sales or  
24 purchases for the amnesty-eligible period was due to reasonable cause and circumstances beyond its  
25 control. Consequently, we find that relief of the amnesty interest penalty is not warranted.

## 26 **OTHER MATTERS**

27 None.

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