

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination,)
 4 Administrative Protest, and Claim for Refund)
 4 Under the Sales and Use Tax Law of:)

5)
 6 NAIM JAMALI, dba Z & T Auto Sales)
 7 Petitioner/Taxpayer/Claimant)

Account Number SR BH 97-084067
 Case ID's 448789, 450475, 595326

South San Francisco, San Mateo County

8 Type of Business: Used car dealer

9 Liability periods:¹ 01/01/04 – 03/31/05 (Case ID 450475)

04/01/05 – 12/31/06 (Case ID 448789)

10 Claim period: 01/01/03 – 03/31/05 (Case ID 595326)

11 Item Disputed Amount

12 Understatement of reported taxable sales \$333,546

Unrecorded taxable sales \$ 22,092

13 Negligence penalty \$ 408 (Case ID 450475)

\$ 2,502 (Case ID 448789)

14 Finality penalty \$ 408 (Case ID 450475)

	<u>450475</u>		<u>448789</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
17 As determined	\$7,202.67	\$720.26	\$25,716.65	\$2,571.65
Finality penalty		720.27		
18 Pre-D&R adjustment	- 3,107.37	- 621.47		
19 Post-D&R adjustment	- 13.81	- 2.76	- 691.77	- 69.17
Proposed redetermination, protested			<u>\$25,024.88</u>	<u>\$2,502.48</u>
20 Adjusted understatement, protested	<u>\$4,081.49</u>	<u>\$816.30</u>		
21 Proposed tax redetermination				\$25,024.88
Adjusted tax		\$4,081.49		
22 Interest through 05/31/12		2,356.16		13,058.34
Negligence penalty		408.15		<u>2,502.48</u>
23 Finality penalty		<u>408.15</u>		
24 Total tax, interest, and penalty		\$7,253.95		\$40,585.70
Payments		<u>- 7,253.95</u>		<u>- 57.66</u>
25 Balance Due		<u>\$ 00.00</u>		<u>\$40,528.04</u>
26 Monthly interest beginning 06/01/12				<u>\$ 145.64</u>

27 _____
 28 ¹ Although one audit was conducted, for the period January 1, 2004, through December 31, 2006, two Notices of Determination were issued to prevent the tolling of the statute of limitations.

UNRESOLVED ISSUES

1
2 **Issue 1:** Whether the Notice of Determination was timely for the period January 1, 2004,
3 through September 30, 2004. We find that the determination was timely issued.

4 Petitioner operates a used car dealership. Petitioner filed annual sales and use tax returns for
5 the years 2002, 2003, and 2004. The Sales and Use Tax Department (Department) issued a Notice of
6 Determination to petitioner on January 24, 2008, for the period January 1, 2004, through March 31,
7 2005. Petitioner asserts that he has always filed his sales and use tax returns on a quarterly basis and
8 thus must have filed returns for the first, second, and third quarters of 2004. On that basis, he asserts
9 that the statute of limitations had passed for the first three quarters of 2004 before the determination
10 was issued.² According to Board records, petitioner filed one sales and use tax return for the year
11 2004, on February 10, 2005 (after its January 31, 2005 due date), which means that the statute of
12 limitations for issuing a Notice of Determination for that year expired on February 10, 2008. (Rev. &
13 Tax. Code, § 6487, subd. (b).) Since the Notice of Determination was issued before this date, it was
14 timely for the entire year of 2007, including the first three quarters.

15 **Issue 2:** Whether adjustments are warranted to the audited understatements of reported taxable
16 sales. We find no further adjustment is warranted.

17 The Department used sales jackets to compile recorded taxable sales for the audit period, not all
18 of which had been recorded in petitioner's sales summaries. The Department found that the recorded
19 amount substantially exceeded reported taxable sales, and, after the most recent reaudit, the amount of
20 that difference is \$333,546. The Department also found five sales jackets containing information about
21 a vehicle purchase and sale, but without a sale price. The Department used the average selling price of
22 \$5,523, computed using recorded selling prices, to establish the audited amount of those five sales.
23 After the appeals conference, the Department found that one of those five sales was listed on a separate
24 audit schedule. Accordingly, that duplicate sale has been deleted, and, in the most recent reaudit, the
25 amount of the four unrecorded sales is \$22,092.

26
27 ² Had petitioner filed a timely return for the third quarter, the limitations period for issuing a determination for that quarter
28 would have expired on October 31, 2007, and thus, if he had filed timely returns for the three quarters, the determination
would not have been timely for those quarters.

1 Petitioner disputes the audited understatements of reported taxable sales. Specifically, he
2 asserts that tax was paid to the Department of Motor Vehicles (DMV) by the purchaser of one of the
3 four vehicles for which no sales price was available. With respect to those four sales, petitioner also
4 argues that the estimated selling price of \$5,523 is excessive and states that the sales may never have
5 been finalized. He also claims that the selling price scheduled by the Department for one of the
6 recorded sales is excessive. In addition, petitioner claims that the Department's schedules include
7 duplicate entries. As a general argument, petitioner asserts that there were no sales represented by
8 sales jackets that were not recorded in his sales summaries. He states that he cannot find the sales
9 jackets in his records, and he questions whether they ever existed, particularly since the Department
10 did not make copies of the sales jackets. Further, petitioner suggests that some or all of the sales
11 jackets could have related to sales that were never consummated.

12 The vast majority of the audited understatement represents sales, compiled from sales jackets
13 by the Department on an actual basis, that were not reported on returns. Only four transactions in the
14 audit were established using an estimated selling price. The Department has made an adjustment for
15 one duplicate entry documented by petitioner. Petitioner has not provided evidence of other errors in
16 the Department's compilation of sales from petitioner's source documents or evidence that any of the
17 sales were not consummated. With respect to the estimated selling price used for four sales, we note
18 that it represents the average selling price, computed using the 177 sales for which prices were
19 available, and petitioner has not provided evidence that the four sales were substantially different in
20 nature from the 177. Petitioner has not provided adequate evidence to show that one of the purchasers
21 paid tax to DMV. Nor are we persuaded by petitioner's allegation that the sales jackets may not have
22 existed when the audit was completed, since he cannot find them now since there is no basis for us to
23 conclude that the Department fabricated the information included in the audit. Accordingly, we
24 recommend no further adjustment to the audited understatements of reported taxable sales. Since we
25 find no further adjustments are warranted, and the amount paid does not exceed the amount due, we
26 also recommend that the claim for refund be denied.

27 **Issue 3:** Whether petitioner was negligent. We conclude that he was.
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1 The Department imposed the negligence penalty because of the discrepancies in the records
2 and the substantial amount of understatement. Petitioner disputes the penalty on the basis that he was
3 not negligent.

4 The understatement of reported taxable sales of \$355,638 is substantial, and it represents an
5 error rate of about 57 percent in comparison to reported taxable sales of \$627,849. Of the total audited
6 understatement, \$328,151 represents transactions for which petitioner provided source documents
7 (sales jackets) that had not been recorded in the sales summaries. We find that the significant
8 understatement, in conjunction with the incomplete recording of sales into the sales summaries, is clear
9 evidence of negligence. Further, since petitioner had been audited previously, for the period January 1,
10 2000, through September 30, 2002, he should have been aware of the necessity to maintain complete
11 records and report accurately. Therefore, we find that the penalty was properly applied.

12 **Issue 4:** Whether relief of the finality penalty is warranted. We find that relief is not
13 warranted.

14 Since petitioner did not timely pay the determination for the period January 1, 2004, through
15 March 31, 2005, or file a petition for redetermination, a finality penalty was applied. Petitioner has
16 requested relief of the penalty on the basis that he has paid the disputed tax for that period. Although
17 the disputed tax liability was paid as of September 3, 2011, the determination was not paid when it
18 became due on February 23, 2008. We find that petitioner has not shown reasonable cause for his
19 failure to timely pay the determination or file a petition for redetermination. Therefore, we find that
20 relief of the penalty is not warranted.

21 **OTHER MATTERS**

22 None.

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