

**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: )  
BARON L. JONES ) Account Number: SR EH 99-904506  
dba Three B Trading Auto Sales ) Case ID 523682  
Petitioner ) Riverside, Riverside County

Type of Business: Used car dealer  
Audit period: 7/1/05 – 6/30/08

<u>Item</u>	<u>Disputed Amount</u>		
Unreported taxable sales	\$1,486,141		
Negligence penalty	\$11,600		
		<u>Tax</u>	<u>Penalty</u>
As determined and protested		\$115,999.49	<u>\$11,599.93</u>
Interest through 10/31/12		58,401.49	
Negligence penalty		<u>11,599.93</u>	
Total tax, interest, and penalty		\$186,000.91	
Payments		- 8.94	
Balance Due		<u>\$185,991.97</u>	
Monthly interest beginning 11/1/12		<u>\$579.95</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 him the opportunity to provide any additional arguments and evidence in writing he wished us to consider, but he did not respond.

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments to the audited understatement of taxable sales are warranted. We conclude that no adjustments are warranted.

Petitioner has operated this used car business since June 1996. He does not have a car lot, but operates from a small office with an attached garage. During the audit period he reported taxable sales

1 of \$898,720, claiming no deductions. Upon audit, the Sales and Use Tax Department (Department)  
2 could not determine petitioner's reporting method from the books and records provided, so it decided  
3 to estimate petitioner's sales by accounting for the number of report of sale forms (ROS) issued to  
4 petitioner by the Department of Motor Vehicles (DMV). DMV issued to petitioner 417 ROS for the  
5 audit period. Petitioner provided 319 ROS for audit, and did not account for the remaining 98 ROS.  
6 The Department noted that of the 319 ROS provided, 30 ROS were used for sales made prior to the  
7 audit, 25 ROS were voided, and 8 ROS were used for sales for resale or returned merchandise  
8 transactions. The Department concluded that the remaining 256 ROS that petitioner provided after the  
9 noted adjustments plus the 98 ROS that were missing were used for retail sales, for total retail sales  
10 during the audit period of 354. Petitioner provided 184 sales contracts that corresponded to the sales  
11 on the 256 ROS, and the Department used those sales contracts to establish the amount of those 184  
12 sales, and to compute an average selling price of \$6,471 per vehicle. The Department also used sales  
13 contracts and purchase costs for 91 vehicles to compute a markup of 12.61 percent. For 44 of the  
14 remaining 72 ROS (256 – 184), the Board's Consumer Use Tax Section was able to provide purchase  
15 costs, and the Department established sales amounts for those 44 vehicles by adding a markup of 12.61  
16 percent to known costs. For the remaining 28 ROS, the Department established the sales amount using  
17 the average selling price per vehicle of \$6,471. To establish the amount of sales represented by 48 of  
18 the 98 missing ROS, the Department used cost information acquired from petitioner's vendors for  
19 purchases of vehicles not recorded in petitioner's records, and it added the markup of 12.61 percent.  
20 For the remaining 50 ROS, the Department computed the sales amount using the average selling price  
21 of \$6,471, but it then reduced the total by 9.47 percent, to provide an allowance for ROS that were  
22 voided and did not represent sales. In total, the Department determined that petitioner failed to report  
23 taxable sales totaling \$1,486,141 for the audit period.

24           Petitioner contends that the Department has made mathematical and audit procedure errors, the  
25 audited number of vehicles sold at retail is overstated, some vehicle sales were counted more than  
26 once, and adjustments are warranted for bad debts and repossessions.

27           Since petitioner's books and records were incomplete and inadequate to support his reported  
28 taxable sales, it was appropriate for the Department to compute petitioner's sales using an alternative

1 method. We find that in using the ROS issued to petitioner by DMV, sales contract amounts, vehicle  
2 sales information from the Board's Consumer Use Tax Section, and vehicle purchase information from  
3 petitioner's vendors, the Department relied on the best available information and made reasonable  
4 assumptions to compute petitioner's sales. Petitioner has not identified any errors in the Department's  
5 audit calculations or provided any documentation to support adjustments to the audit. Nor has he  
6 identified any sales upon which tax has been paid that resulted in worthless accounts or vehicle  
7 repossessions that sustained a net loss of gross receipts. We note that petitioner's income tax returns  
8 do not indicate any bad debt deductions. Petitioner's mere allegations that the audit contains  
9 mathematical and procedure errors, or that he suffered bad debt and repossession losses, without  
10 documentation or other support, are insufficient for us to recommend any adjustments.

11 **Issue 2:** Whether petitioner was negligent. We conclude that he was.

12 The Department imposed the negligence penalty because the amount of unreported taxable  
13 sales is substantial. Petitioner has not specifically disputed the negligence penalty.

14 Petitioner's books and records were incomplete and inadequate to support his reported taxable  
15 sales. We find this lack of documentation is evidence of negligence in recordkeeping. The \$1,486,141  
16 taxable sales understatement represents a 165.36 percent error rate when compared to reported taxable  
17 sales of \$898,720. This means petitioner reported less than half of his taxable sales. Petitioner has not  
18 provided a non-negligent explanation for this discrepancy. We find that the large error rate is evidence  
19 of negligence in reporting. Although this was petitioner's first audit, we conclude that his inadequate  
20 records and large error rate support imposition of the negligence penalty.

21 **OTHER MATTERS**

22 None.

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24 Summary prepared by Pete Lee, Business Taxes Specialist II  
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**MARKUP TABLE**

Percentage of taxable vs. nontaxable purchases	100% taxable
Mark-up percentages developed	12.61%
Self-consumption allowed in dollars	\$0
Pilferage allowed in dollars	\$0