

**CALIFORNIA STATE BOARD OF EQUALIZATION**

**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
 Under the Sales and Use Tax Law of: )  
 MATTHEW EMEREY LATRAY, ) Account Number: SR AS 100-255127  
 dba Blue Star Comm (fka MMM Enterprises) ) Case ID 402632  
 Petitioner ) Los Angeles, Los Angeles County

Type of Business: Retailer of electronic equipment  
 Audit Period: 1/1/04 – 6/30/06

<u>Disputed Item</u>	<u>Amount</u>		
Disallowed claimed sales in interstate commerce	\$349,464		
Disallowed claimed sales for resale	\$ 17,400		
Negligence penalty	\$ 3,617		
		<u>Tax</u>	<u>Penalty</u>
As determined, protested	\$42,935.92	\$42,935.92	\$4,293.63
Adjustments: Sales and Use Tax Department	-9,470.17	-9,470.17	-947.03
Appeals Division	+2,701.32	+2,701.32	+270.15
Proposed redetermination	\$36,167.07	\$36,167.07	\$3,616.75
Amount Concurred in	<u>5,900.79</u>	<u>5,900.79</u>	<u>0.00</u>
Protested	<u>\$30,266.28</u>	<u>\$30,266.28</u>	<u>\$3,616.75</u>
Proposed tax redetermination	\$36,167.07	\$36,167.07	
Interest through 6/30/10	17,719.28	17,719.28	
Penalty	<u>3,616.75</u>	<u>3,616.75</u>	
Total tax, interest, and penalties	\$57,503.10	\$57,503.10	
Payments	<u>-370.33</u>	<u>-370.33</u>	
Balance due	<u>\$57,132.77</u>	<u>\$57,132.77</u>	
Monthly interest beginning 7/1/10	<u>\$208.81</u>	<u>\$208.81</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner has established that any of the disallowed claimed sales in interstate commerce should be allowed as exempt interstate commerce sales. We conclude that petitioner has not.

1           Petitioner started this business on July 1, 2003, selling electronic equipment. In April 2006, the  
2 Sales and Use Tax Department (Department) contacted petitioner regarding a routine sales and use tax  
3 audit and requested several times that petitioner provide his records for audit, with no success. The  
4 Department then served petitioner with a subpoena duces tecum dated December 15, 2006, ordering  
5 petitioner to appear at the Board's Culver City District Office with his sales and tax returns, federal  
6 income tax returns, general ledgers, shipping documents, paid bills, and invoices for fixed asset  
7 purchases and sales for the period July 1, 2003, through March 31, 2006. On January 24, 2007,  
8 petitioner appeared with some (but not all) of the records demanded.

9           Upon audit of the records provided, the Department disallowed all of petitioner's claimed  
10 exempt sales in interstate commerce of \$452,423 because petitioner had not provided supporting  
11 documentation showing that the subject property had been shipped outside California. Subsequently,  
12 petitioner did provided supporting documentation that warranted a reduction to the disallowed claimed  
13 exempt sales in interstate commerce to \$349,464. At the appeals conference, petitioner presented  
14 documentation (copies of some invoices, purchase orders, and shipping invoices) with respect to eight  
15 sales (totaling \$172,775) to six entities, and argued that this documentation shows shipment out of  
16 state. Petitioner further contends that these eight transactions should be used as evidence to support  
17 other claimed exempt sales, though he has not identified the specific transactions he believes should be  
18 allowed.

19           Our review of the documentation on which petitioner relies indicates that none of such  
20 documentation adequately establishes shipment outside California as to the eight transactions. We  
21 therefore find that petitioner has not provided adequate documentary evidence to warrant further  
22 adjustments for claimed exempt sales in interstate commerce.

23           **Issue 2:** Whether petitioner has established that any of the disallowed claimed sales for resale  
24 should be allowed as valid sales for resale. We conclude that petitioner has not.

25           Petitioner claimed \$29,000 as nontaxable sales for resale on his returns for the first quarter 2006  
26 (\$5,800) and for the second quarter 2006 (\$23,200). The Department examined the available records  
27 and initially disallowed all these claimed sales for resale because they were not supported by timely,  
28 valid resale certificates. Subsequently, petitioner provided resale certificates but the Department found

1 that only one such resale certificate, from Sity Communication, Inc., was valid. The Department  
2 allowed the sale supported by that certificate as a valid sale for resale, reflected in the May 25, 2006  
3 invoice number 11764, in the amount of \$11,600. Since the Department found none of the other resale  
4 certificates to be valid, the Department disallowed the remaining \$17,400 in claimed nontaxable sales  
5 for resale. During the appeals conference, petitioner did not specifically concede the remaining  
6 disallowed claimed nontaxable sales for resale of \$17,400, but he provided no additional resale  
7 certificates or other documents to support the disallowed claimed sales for resale. We thus recommend  
8 no reduction of the disallowed claimed sales for resale of \$17,400.

9 **Issue 3:** Whether petitioner was negligent. We conclude that petitioner was negligent.

10 The Department asked petitioner to provide records for audit, but without success. As a result,  
11 the Department was forced to serve petitioner with a subpoena duces tecum, to which petitioner  
12 responded by providing some, but not all, the records demanded. Petitioner's repeated failure to  
13 respond to the Department's requests for records, which required the Department to finally serve a  
14 subpoena duces tecum, and the fact that petitioner then provided only limited records, indicate that  
15 petitioner failed to maintain complete business records, and petitioner certainly failed to provide  
16 complete business records for examination, as required. Additionally, the disallowed exempt sales in  
17 interstate commerce and nontaxable sales for resale equal \$405,645, which represents an error ratio of  
18 812 percent when compared to reported taxable sales of \$49,995 ( $\$405,645 \div 49,995$ ). This support a  
19 finding of negligence at the very least, and we conclude that the negligence penalty was properly  
20 imposed.

### 21 **OTHER DEVELOPMENTS**

22 The D&R explains that in reviewing documents submitted by petitioner, the Department  
23 discovered additional unreported taxable sales measured by \$29,659, and asserted that amount in  
24 additional taxable measure. We agreed, and recommended that adjustment. After the D&R was  
25 issued, the Department advised that the recommendation in our D&R should have included an  
26 additional measure to account for additional taxable sales of \$1,750 and excess tax reimbursement  
27 collected in the amount of \$110.06. Based on our review of the information presented by the  
28 Department, we find in the SD&R that the amount of the remaining measure of tax should be further

1 increased by \$3,084. Since the adjustments to reduce the determined liability that had been made  
2 earlier in the appeals process were greater than the increases we recommend in the D&R and SD&R,  
3 the total deficiency with the increases remains less than the determined liability. This means that the  
4 Department did not need to assert the adjustments as increases to the determination pursuant to  
5 Revenue and Taxation Code section 6563.

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Summary prepared by Rey Obligacion, Retired Annuitant