

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 YIN MEI LIANG, dba Miss Paris) Account Number SR EA 100-844296
 6 Petitioner) Case ID 492980
 7) Monrovia, Los Angeles County

8 Type of Business: Clothing retailer

9 Audit period: 04/01/05 – 12/31/07

10 Item Disputed Amount

11 Understatement of reported taxable sales \$79,795
 12 Negligence penalty \$ 378
 13 Failure-to-file penalty \$ 240

	<u>Tax</u>	<u>Penalty</u>
14 As determined	\$6,511.56	\$651.15
15 Post-D&R adjustment	- 327.44	- 32.75
16 Proposed redetermination, protested	<u>\$6,184.12</u>	<u>\$618.40</u>
17 Proposed tax redetermination	\$6,184.12	
18 Interest through 10/31/12	2,822.12	
19 Negligence penalty	378.15	
20 Failure-to-file penalty	<u>240.25</u>	
21 Total tax, interest, and penalty	\$9,624.64	
22 Payments	- 54.00	
23 Balance Due	<u>\$9,570.64</u>	
24 Monthly interest beginning 11/01/12	<u>\$ 30.65</u>	

21 UNRESOLVED ISSUES

22 **Issue 1:** Whether adjustments are warranted to the audited understatement of reported taxable
 23 sales. We find no further adjustment is warranted.

24 Petitioner sold clothing, footwear, and accessories from April 2005 through December 2007,
 25 and the business address shown on the Board's records was the Costa Mesa Swap Meet. Petitioner
 26 filed annual sales and use tax returns for the partial year 2005 and the year 2006, reporting total sales
 27 of \$25,013 and \$8,000, respectively, and she did not file a sales and use tax return for 2007. Petitioner
 28 claimed all reported sales as nontaxable sales for resale.

1 For audit, petitioner provided three sales invoices and federal income tax returns for 2005,
2 2006, and 2007, on which she had reported gross receipts of \$25,013, \$8,000, and \$31,000,
3 respectively. On her federal tax return for 2006, petitioner had claimed no expenses, and had reported
4 net profits equal to the gross receipts of \$8,000. Based on the limited records, the Sales and Use Tax
5 Department (Department) accepted the gross receipts reported on the 2005 and 2007 federal tax returns
6 as substantially accurate. However, since the federal return for 2006 reported net income equal to
7 gross receipts, the Department concluded that the reported gross receipts were actually petitioner's net
8 income. Accordingly, the department used the \$25,013 and \$31,000 gross receipts petitioner reported
9 on federal tax returns as audited total sales for 2005 and 2007, respectively, and for 2006 used the
10 average of those amounts, \$28,007, for a total of \$84,020 for the audit period. The Department
11 reviewed the three invoices which petitioner claimed represented sales for resale, and instructed
12 petitioner to send XYZ letters to the customers. The Department received no responses to the XYZ
13 letters and concluded that the evidence did not show the three sales were nontaxable sales for resale.
14 Therefore, the Department regarded all of petitioner's sales as taxable. In the D&R, we concluded that
15 one of the invoices, for \$4,225, did represent a sale for resale based on the circumstances of that sale.

16 Petitioner contends that all of her sales were nontaxable sales for resale. However, she states
17 she cannot provide supporting documentation because she has lost all her books and records as a result
18 of multiple moves of her residence.

19 We agree with the Department's conclusion that the amount reported as gross receipts on the
20 2006 federal tax return was actually petitioner's net income for that year since the gross receipts and
21 net income figures on that return are identical (indicating that the amount reported as gross receipts is
22 net of expenses). We find that the Department's audit approach was reasonable, particularly since
23 petitioner provided virtually no records. We reject petitioner's contention that all her sales were
24 nontaxable sales for resale because she has not provided resale certificates or other evidence, and it is
25 therefore presumed that the sales were retail sales subject to tax. (Rev. & Tax. Code, § 6091.) Further,
26 we find that the remaining two invoices petitioner provided are not adequate to show that those sales
27 were nontaxable sales for resale since the invoices were recreated by petitioner's customer based on its
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1 recollection of the purchases, and the total of the two purchase amounts is equivalent to reported sales
2 for six months for that customer. Accordingly, we recommend no further adjustment.

3 **Issue 2:** Whether petitioner was negligent. We find that she was.

4 The Department imposed the negligence penalty because petitioner failed to provide adequate
5 records for audit. Petitioner disputes the penalty on the basis that she was not negligent, asserting that
6 the reason she could not provide records is that they had been lost during her multiple moves.

7 It is undisputed that petitioner provided almost no records. She did not provide any summary
8 records other than federal tax returns or any source documents except three sales invoices, two of
9 which had been recreated by the customer. We find that any business person, even one with limited
10 experience, should be aware that she is responsible for maintaining records of her business operations
11 and for keeping them intact during moves of her residence. We find that the absence of records, in
12 conjunction with the fact that petitioner reported none of her sales as subject to tax, is clear evidence of
13 negligence. Thus, we conclude that the penalty was properly applied, even though petitioner had not
14 been audited previously.

15 **Issue 3:** Whether relief of the failure-to-file penalty is warranted. We find relief is not
16 warranted.

17 Since petitioner did not file a sales and use tax return for 2007, a failure-to-file penalty was
18 applied to the amount of taxes determined for that year. Petitioner has requested relief of the penalty
19 on the basis that she did not have any taxable sales to report. We rejected that assertion, and we find
20 that petitioner has not established reasonable cause for her failure to file a return. Thus, we find relief
21 of the penalty is not warranted.

22 **OTHER MATTERS**

23 None.

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