STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

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:	)	
LIFE-CARE HOME HEALTH & MEDICAL SUPPLIES, INC.	)	Account Number SR AS 99-831665 Case ID 495335
Petitioner	)	Los Angeles, Los Angeles County

Type of Business: Retailer of home medical supplies

Audit period: 7/1/05 – 6/30/08

Item	Disputed Amount
Unreported sales	$609,334
Negligence penalty	$5,027

	Tax	Penalty
As determined and protested	$50,270.13	$5,027.04
Interest through 10/31/12	22,535.79	
Negligence penalty	5,027.04	
Total tax, interest, and penalty	$77,832.96	
Payments	- 93.91	
Balance Due	$77,739.05	
Monthly interest beginning 11/1/12	$250.88	

This matter was previously scheduled for Board hearing in April 2012, but was postponed at petitioner's request due to a scheduling conflict. It was rescheduled for Board hearing in July 2012, but was postponed by petitioner due to a medical reason.

UNRESOLVED ISSUES

Issue 1: Whether petitioner has established that an adjustment to the audited understatement of taxable sales is warranted. We conclude that it has not.

Petitioner receives reimbursements from Medi-Cal and Medicare Part B as payment for all of its sales. During the audit period, petitioner's total bank deposits of $1,303,042 substantially exceeded its reported total sales of $504,814. The Sales and Use Tax Department (Department) decided that further investigation of petitioner's reported sales was warranted. Based on tests of petitioner's Medi-Cal and Medicare reimbursements, the Department established that petitioner made taxable sales of

$867,637 for the audit period. Since petitioner reported taxable sales of $258,303, the amount of its audited understated taxable sales is $609,334, representing a reporting error rate of 236 percent.

Petitioner states that the understatement resulted from its attempt to take credits for exempt sales that it mistakenly reported as taxable sales during the period July 1, 2002, through June 30, 2005, and also possibly during the early quarters of this audit period. Petitioner requests that its remedy to recover overpaid taxes from the past by understating its taxable sales on current returns without verification or support for the claimed overpayments be allowed.

There is no legal authority to allow a taxpayer to grant itself a refund by intentionally understating its taxable sales. A taxpayer must file a timely claim for refund in order to recover any overpayments made on prior returns. Here, the statute of limitations for filing a timely claim for refund for the period July 1, 2002, through June 30, 2005, has expired, nor does the evidence support that petitioner overpaid its taxes during prior periods, or during the early portion of the current audit period. Petitioner's audited taxable sales for this audit period are based on its bank deposits and petitioner does not dispute the amount of taxable sales established by the Department. We conclude no adjustments are warranted.

Issue 2: Whether relief under Revenue and Taxation Code section 6596 is warranted. We conclude that relief is not warranted.

Petitioner contends that its attorney contacted the Board for advice on how to handle the overstatement of taxable sales on returns filed for prior periods, and was advised to claim the exempt sales that occurred in prior periods on its current returns. Petitioner has not provided a written copy of the advice on which it allegedly relied, and states that it does not know when it received the advice, or whether the advice was provided in writing or orally, because the attorney who contacted the Board on its behalf has since passed away. We have reviewed the Board's records, and find no evidence of any written advice given to petitioner on this subject. Furthermore, even if the Department had given written advice to petitioner, which is not supported by the evidence, relief under section 6596 would not be available since relief under section 6596 is limited to qualifying advice as to whether an activity is subject to tax. (Rev. & Tax. Code, § 6596, subd. (b)(2).) We conclude that there is no basis for relief under section 6596.

Issue 3: Whether petitioner was negligent. We conclude that it was.

The Department imposed the negligence penalty because the 236 percent audited reporting error rate was far in excess of what would be expected from a normally prudent businessperson, and similar errors were found in the prior audit. Petitioner contends that the understatement, if any, was due to a misunderstanding of the procedures to amend erroneous returns and is not due to negligence.

The Department's prior audit of petitioner for the period July 1, 1999, through June 30, 2002, established a deficiency measure of $560,639, including $556,409 for disallowed claimed exempt sales under Medicare Part B. The reporting error rate was 84 percent. Here, the $609,334 deficiency measure represents a 236 percent error rate, a substantial increase in magnitude. We also note that petitioner failed to use its own records to prepare accurate returns during both audit periods. We find that the evidence amply supports the finding of negligence.

OTHER MATTERS

None.

Summary prepared by Pete Lee, Business Taxes Specialist II

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