

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Claim for Refund)
4 Under the Sales and Use Tax Law of:)5 HEIDI RACHAEL MENDEZ, EDGARDO)
6 MENDEZ, AND RACHEL MENDEZ,)
7 dba L & E Toys)Account Number SR FH 25-914285
Case ID 495816

8 Claimant)

Chula Vista, San Diego County

9 Type of Business: Sales of toys and gifts

10 Claim period: 07/01/06 – 09/30/07

11 ItemClaimed Refund

12 Overpaid tax on unclaimed sales for resale \$3,806

13 Claimant filed a claim for refund for tax related to sales totaling \$49,097, which it asserts were
14 nontaxable sales for resale that had not been claimed as deductions on its sales and use tax returns.15 **UNRESOLVED ISSUE**16 **Issue:** Whether claimant has established that the sales at issue were nontaxable sales for resale.

17 We conclude it has not.

18 Claimant has made wholesale and retail sales of gifts, toys, and other miscellaneous items since
19 November 1991. Claimant filed a timely claim for refund claiming that it had overpaid tax of
20 \$3,806.00 on nontaxable sales for resale that were not claimed as deductions on returns for the period
21 July 1, 2006, through September 30, 2007. Although the Sales and Use Tax Department (Department)
22 requested evidence, claimant provided no source documentation to support the claimed deductions.
23 However, following the appeals conference, claimant provided handwritten copies of daily sales
24 transactions for the period and copies of some resale certificates along with customer identification,
25 including current Mexican merchant cards for some customers. The Department noted that the
26 handwritten copies of the daily sales transactions do not provide customer information, and the eight
27 resale certificates claimant provided do not contain seller's permit numbers or an explanation of why
28 the purchaser was not required to hold a California seller's permit. Furthermore, three of the eight

1 resale certificates are dated in 2008 and 2010, after the end of the claim period on September 30, 2007.
2 Claimant responds that, although it was unaware of the requirement to obtain a resale certificate, it did
3 timely gather customer information. Further, claimant asserts that the resale certificates are valid,
4 without California seller's permit numbers, because claimant's customers are from Mexico, sell the
5 merchandise in Mexico, and are not required to hold a California seller's permit.

6 Claimant concedes that it did not obtain resale certificates at the time of the transactions, and
7 the documents it has provided show only that some of the customers who allegedly made purchases for
8 resale possess current Mexican merchant cards. The handwritten copies of daily sales transactions
9 simply list the sale date, the items purchased, and the price, with no customer information. Thus, there
10 is no way to even establish the identity of the customers, much less whether they intended to resell the
11 merchandise purchased or did in fact resell the goods. In addition, the resale certificates provided after
12 the appeals conference were incomplete. Further, even if we concluded that the resale certificates were
13 complete and obtained timely, they would not represent persuasive evidence supporting this claim
14 because there is no information connecting the customers listed on the resale certificates with the
15 transactions at issue. Accordingly, we find that claimant has not established that it has overpaid tax on
16 sales that were nontaxable sales for resale.

17 **OTHER MATTERS**

18 None.

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