

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for)
 4 Redetermination and Administrative Protest)
 4 Under the Sales and Use Tax Law of:)
 5 VINCENT MILLHOUSE,) Account Number: SR AS 100-253531
 6 dba Rush Hour T-Shirts and Apparel) Case ID's 434901, 450539
 7 VINCENT MILLHOUSE and LISA D. SMITH,) Account Number: SR AS 100-776736
 8 dba Rush Hour Silkscreen) Case ID 434902
 8 Petitioners/Taxpayer) Inglewood, Los Angeles County

9 Type of Business: Sales of t-shirts, fireworks, and Christmas trees

10 Liability periods: 04/01/04 – 12/31/04 (case ID 450439)

01/01/05 – 07/10/06 (case ID 434901)

11 07/11/06 – 12/31/06 (case ID 434902)

12	<u>Item</u>	<u>Disputed Amount</u>					
13	Unreported sales	\$252,873 (Case ID's 450439 & 434901, combined)					
		\$ 70,534 (Case ID 434902)					
14	Negligence penalty	\$ 1,138 (Case ID 434901)					
		\$ 681 (Case ID 434902)					
15	Failure-to-file penalty	\$ 948 (Case ID 450539)					
16	Finality penalty	\$ 929 (Case ID 450539)					
		<u>450539</u>		<u>434901</u>		<u>434902</u>	
17		<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
18	As determined:	\$15,235.00	\$1,523.50	\$17,343.74	\$1,734.37	\$12,358.50	\$1,235.85
19	Adjustment - Appeals Division	- 5,756.00	- 575.60	- 5,960.72	- 596.06	-5,549.44	- 554.94
20	As adjusted	\$ 9,479.00	\$947.90				
21	Proposed redetermination			\$11,383.02	\$1,138.31	\$6,809.06	\$ 680.91
22	Finality penalty		928.82				
23	Less concurred	<u>00.00</u>	<u>00.00</u>	<u>00.00</u>	<u>00.00</u>	<u>990.00</u>	<u>00.00</u>
24	Balance, protested	<u>\$ 9,479.00</u>	<u>\$1,876.72</u>	<u>\$11,383.02</u>	<u>\$1,138.31</u>	<u>\$5,819.09</u>	<u>\$ 680.91</u>
25	Adjusted tax		\$ 9,479.00				
26	Proposed tax redetermination			\$11,383.02		\$ 6,809.06	
27	Interest through 02/29/12		5,734.00		5,886.56		2944.84
28	Negligence penalty				<u>1,138.31</u>		<u>680.91</u>
29	Failure-to file-penalty		947.90				
30	Finality penalty		<u>928.82</u>				
31	Total tax, interest, and penalty		\$17,089.72		\$18,407.89		\$10,434.81
32	Payments		<u>-192.77</u>		<u>0.00</u>		<u>0.00</u>
33	Balance Due		<u>\$16,896.95</u>		<u>\$18,407.89</u>		<u>\$10,434.81</u>
34	Monthly interest beginning 03/01/12		<u>\$ 54.17</u>		<u>\$ 66.40</u>		<u>\$ 39.72</u>

1 This matter was scheduled for Board hearing in March 2011, June 2011, and October 2011.
2 Petitioners did not respond to the first Notice of Hearing. After being informed the matter would be
3 presented to the Board for decision without oral hearing, petitioners requested that the hearing be
4 rescheduled. Petitioners requested that the June 2011 hearing be postponed to allow additional time to
5 prepare, and they waived their right to appear at the hearing in October, but they later again requested
6 that the matter be rescheduled for hearing.

7 UNRESOLVED ISSUES

8 **Issue 1:** Whether adjustments are warranted to the amounts of unreported sales. We conclude
9 no further adjustments are warranted.

10 Mr. Millhouse began operating this business as a sole proprietor, and then formed a partnership
11 with Ms. Smith. The business sold t-shirts all year and made seasonal sales of fireworks and
12 Christmas trees. The business provided limited summary records and no source documents.

13 For the sole proprietorship, the Sales and Use Tax Department (Department) estimated sales of
14 fireworks based on the income petitioner had reported to the City Inglewood. To estimate the sales of
15 Christmas trees, the Department used the number of trees delivered in November and December 2005,
16 as recorded on bills of lading, and an estimated average sales price of \$50 per tree. The Department
17 used the same estimate of taxable sales for the years 2004 (for the sole proprietorship) and 2006 (for
18 the partnership). The Department estimated sales of t-shirts for the second quarter 2004 only. In the
19 D&R's we recommended that the computed sales of fireworks be adjusted for sales tax included and
20 that the computed sales of Christmas trees be adjusted for an allowance for unsold trees, estimated at
21 5 percent, and for a reduced average selling price of \$29 per tree.

22 Petitioner does not dispute the established amounts of fireworks sales for 2005 and 2006 but
23 asserts that he made no sales of fireworks in 2004. However, petitioner had obtained a license to sell
24 fireworks in 2004, which we find is evidence that he did sell fireworks, and petitioner has provided no
25 evidence to the contrary. Therefore, we recommend no further reduction to audited fireworks sales.

26 With respect to Christmas trees, petitioner asserts that the estimated amounts of sales are
27 excessive because he purchased significantly fewer trees in 2004 and 2006 than he purchased in 2005,
28 his average selling price per tree is only \$19.95, and 60 percent of the trees were sold for resale,

1 donated to charity (which would be taxable on cost, even if proven), or discarded. Petitioner has
2 provided no evidence to support his estimates of the numbers of trees purchased, and we find there is
3 no basis for further reducing the average selling price per tree because the \$29 was computed using
4 information provided by petitioner. We find the two resale certificates proffered in support of claimed
5 sales for resale were not valid. Petitioner disputes the Department's estimated sales of t-shirts for the
6 second quarter 2004, arguing that it made no sales of t-shirts for that period. However, the Department
7 has provided evidence that petitioner made sales of t-shirts in 2003 and 2005, and petitioner's assertion
8 is unsupported. We conclude that no further adjustments are warranted.

9 **Issue 2:** Whether petitioners were negligent for the periods January 1, 2005, through July 10,
10 2006, and July 11, 2006, through December 31, 2006. We conclude that they were.

11 The Department imposed negligence penalties because petitioners had inadequate records, and
12 they had not reported *any* sales of fireworks or Christmas trees. The failure to report sales of fireworks
13 and Christmas trees and the failure to maintain any source documents are strong evidence of
14 negligence. Further, the understatements of reported taxable sales were substantial (\$258,872 for the
15 sole proprietorship, an understatement of 437 percent, and \$82,534 for the partnership, an
16 understatement of 350 percent). We find petitioners' failure to report any sales of fireworks or
17 Christmas trees cannot be explained merely as the result of inexperience in business (e.g.,
18 Mr. Millhouse included amounts for tax on the income statements he filed with the City of Inglewood,
19 indicating that he was aware his sales of fireworks were subject to tax). We find the understatements
20 were the result of negligence, and the penalties were properly applied.

21 **OTHER DEVELOPMENTS**

22 Since Mr. Millhouse did not file a sales and use tax return for the second, third, or fourth
23 quarters of 2004, failure-to-file penalties have been imposed for those quarters, and since he failed to
24 timely pay or petition the determination, a finality penalty has been imposed (case ID 450539).
25 Although we explained he could submit a request for relief of these penalties, he has not done so.
26 Accordingly, we have no basis to consider recommending relief of these penalties.

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