

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 KAMAL NOORZADY, dba Azteca Motors) Account Number: SR EH 97-961833
 6 Petitioner) Case ID 509930
 7 _____) Ontario, San Bernardino County

8 Type of Business: Used car dealer

9 Audit period: 07/01/05 – 02/14/08

10 Item Disputed Amount

11 Unreported sales \$37,193

12 Negligence penalty \$12,256

	<u>Tax</u>	<u>Penalty</u>
13 As determined	\$129,037.95	\$12,903.85
14 Pre-D&R adjustment	-3,559.51	-355.98
15 Post-D&R adjustment	<u>-2,921.33</u>	<u>-292.12</u>
16 Proposed redetermination	\$122,557.11	\$12,255.75
17 Less concurred	<u>-119,640.25</u>	<u>00.00</u>
18 Balance, protested	<u>\$2,916.86</u>	<u>\$12,255.75</u>
19 Proposed tax redetermination	\$122,557.11	
20 Interest through 04/30/12	51,660.25	
21 Negligence penalty	<u>12,255.75</u>	
22 Total tax, interest, and penalty due	<u>\$186,473.11</u>	
23 Monthly interest beginning 05/01/12	<u>\$ 714.92</u>	

24 This matter was scheduled for Board hearing on October 27, 2011, but was postponed because the
 25 afternoon session of that meeting was cancelled. It was then scheduled for hearing on January 31,
 26 2012, but was rescheduled by the Board Proceedings Division.

27 UNRESOLVED ISSUES

28 **Issue 1:** Whether petitioner has established that an additional allowance for voided report of
 sale forms is warranted. We find that no further allowance is warranted.

Petitioner operated a used car dealership selling vehicles at retail and wholesale. The
 remaining amount in dispute relates to the 65 Report of Sale (ROS) forms issued to petitioner by the

1 Department of Motor Vehicles which were not accounted for in the available sales jackets. The Sales
2 and Use Tax Department (Department) initially concluded that the 65 missing ROS forms represented
3 65 unrecorded vehicle sales. At the appeals conference, petitioner asserted that an adjustment should
4 be made to reflect a 10 percent allowance for voided ROS forms. The Department agreed at the
5 conference to a five percent allowance, based on measure. We find that the Department's approach is
6 reasonable, and that petitioner has not provided any evidence to support an increase in the percentage
7 of voids allowed. We therefore conclude that no further adjustment is warranted.

8 **Issue 2:** Whether petitioner was negligent. We find that he was.

9 The Department assessed the negligence penalty because the records were inadequate. This is
10 petitioner's first audit. Petitioner contends he was not negligent because he tried to report all his sales,
11 and all books and records were available except for the missing ROS forms. Petitioner states that the
12 business was actually a partnership, that the partner prepared and signed all the returns, and that he
13 possibly hid the missing ROS forms. Petitioner also contends the partner, Mr. Juan Sotelo, should be
14 held liable. On the latter issue, although petitioner applied for a permit as a sole proprietor, the
15 Department has found, based on its review of income tax returns in preparation for the previously-
16 scheduled Board hearing, that the business did operate as a partnership of Mr. Noorzady and
17 Mr. Sotelo through the year 2007. The Department has issued a determination to the partnership,
18 under seller's permit number SR EH 53-007397. Thus, since both partners are jointly and severally
19 liable for the debts of the partnership, Mr. Sotelo is being held liable for the amounts incurred while he
20 was a partner (although the determination was issued for the period July 1, 2005, through February 14,
21 2008, the liability for the first quarter 2008 has been deleted as to Mr. Sotelo).

22 We find petitioner failed to provide *reliable* records, and 10 percent of the ROS forms were
23 missing, which is substantial. For these reasons, we find petitioner was negligent in recordkeeping.
24 Also, we note that the understatement of \$1,560,358, which represents an error rate of 28.27 percent, is
25 substantial. Further, \$854,845 of the understatement represents taxable sales that petitioner had
26 recorded but did not report. We find that the substantial understatement and petitioner's failure to
27 report taxable sales of \$854,845 that it had recorded in its own records are evidence of negligence in
28 reporting.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In regards to petitioner’s allegations that the errors in reporting and the missing ROS forms were attributable to a partner, where a partner of the taxpayer is guilty of negligence, the negligence penalty remains applicable even if the taxpayer’s partner acted without the taxpayer’s knowledge or consent. (Audit Manual § 0506.20.) Although this is petitioner’s first audit, we conclude that the evidence of negligence is sufficient to warrant imposition of the penalty.

OTHER MATTERS

None.

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