

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

Type of Business: Used car dealer
Audit period: 07/01/05 – 02/14/08

<u>Item</u>	<u>Disputed Amount</u>		
Unreported sales	\$37,193		
Negligence penalty	\$12,256		
		<u>Tax</u>	<u>Penalty</u>
As determined		\$129,037.95	\$12,903.85
Adjustment - Sales and Use Tax Department		-3,559.51	-355.98
- Appeals Division		<u>-2,921.33</u>	<u>-292.12</u>
Proposed redetermination		\$122,557.11	\$12,255.75
Less concurred		<u>-119,640.25</u>	<u>00.00</u>
Balance, protested		<u>\$2,916.86</u>	<u>\$12,255.75</u>
Proposed tax redetermination		\$122,557.11	
Interest through 02/29/12		50,230.41	
Negligence penalty		<u>12,255.75</u>	
Total tax, interest, and penalty due		<u>\$185,043.27</u>	
Monthly interest beginning 03/01/12		<u>\$ 714.92</u>	

This matter was scheduled for Board hearing on October 27, 2011, but was postponed because the afternoon session of that meeting was cancelled.

UNRESOLVED ISSUES

Issue 1: Whether petitioner has established that an additional allowance for voided ROS 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 forms (ROS) issued to petitioner by the Department of Motor Vehicles which were not accounted for in the available sales jackets. The Sales

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

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

8 The Department assessed the negligence penalty because the records were inadequate. This is
9 petitioner's first audit. Petitioner contends he was not negligent because he tried to report all his sales,
10 and all books and records were available except for the missing ROS. Petitioner states that the
11 business was actually a partnership, that the partner prepared and signed all the returns, and that he
12 possibly hid the missing ROS. Petitioner contends the partner should be held liable as well.

13 We find petitioner failed to provide *reliable* records, and 10 percent of the ROS were missing,
14 which is substantial. For these reasons, we find petitioner was negligent in recordkeeping. Also, we
15 note that the understatement of \$1,560,358, which represents an error rate of 28.27 percent, is
16 substantial. Further, \$854,845 of the understatement represents taxable sales that petitioner had
17 recorded but did not report. We find that the substantial understatement and petitioner's failure to
18 report taxable sales of \$854,845 that it had recorded are evidence of negligence in reporting.

19 In regards to petitioner's allegations that the errors in reporting and the missing ROS were
20 attributable to a partner, we find petitioner has failed to prove the existence of a partnership. However,
21 even if he could do so, that would not affect the application of the negligence penalty since, where a
22 partner of the taxpayer is guilty of negligence, the negligence penalty remains applicable even if the
23 taxpayer's partner acted without the taxpayer's knowledge or consent. (Audit Manual § 0506.20.)
24 Although this is petitioner's first audit, we conclude that the evidence of negligence is sufficient to
25 warrant imposition of the penalty.

26 OTHER DEVELOPMENTS

27 None.

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