

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	<u>\$12,255.75</u>
Less concurred		<u>-119,640.25</u>	
Balance, protested		<u>\$2,916.86</u>	<u>\$12,255.75</u>
Proposed tax redetermination		\$122,557.11	
Interest through 10/31/11		47,574.99	
Negligence penalty		<u>12,255.75</u>	
Total tax, interest, and penalty due		<u>\$182,387.85</u>	
Monthly interest beginning 11/01/11		<u>\$612.79</u>	

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 low to mid-value vehicles at retail and wholesale. The remaining disputed audit item 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 and Use Tax Department (Department) initially concluded that the 65 missing ROS represented 65 unrecorded vehicle sales. At the appeals conference, petitioner asserted that an

1 adjustment should be made to reflect a 10 percent allowance for voided ROS. The Department agreed
2 at the conference to a five percent allowance, based on measure,¹ which is based on the number of
3 available ROS forms that were voided compared to those that represented taxable sales. We find that
4 the Department's approach is reasonable, and that petitioner has not provided any evidence to show
5 that a higher percentage of voids should be allowed. We therefore conclude that no further adjustment
6 is warranted.

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

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

14 We find petitioner failed to provide *reliable* records, which necessitated the use of an
15 alternative audit method. Furthermore, 10 percent of the ROS were missing which is substantial. For
16 these reasons, we find petitioner was negligent in recordkeeping. Further, we find petitioner's failure
17 to report substantial amounts (\$854,845) of taxable sales it recorded, as well as the large measure of
18 understatement of \$1,560,358 representing an error rate of 28.27 percent, is further evidence of
19 negligence in reporting.

20 In regards to petitioner's unsupported allegations that the errors in reporting and the missing
21 ROS were attributable to a partner, we find petitioner has failed to prove the existence of a partnership.
22 However, even if he could do so, that would not affect the application of the negligence penalty here
23 since, where a partner of the taxpayer is guilty of negligence, the negligence penalty remains
24 applicable even if the taxpayer's partner acted without the taxpayer's knowledge or consent. (Audit
25

26 _____
27 ¹ The conceded allowance equates to 3.25 voided transactions. The allowance should have been calculated based on the
28 number of voided ROS forms. Here, at a rate of five percent voids and applying the usual rounding rules, three missing
ROS forms should have been allowed as voids. This discrepancy favors petitioner.

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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 DEVELOPMENTS

None.

Summary prepared by Thea C. Etheridge, Business Taxes Specialist II