

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:)
MIGUEL OREJEL AND MAGDALENA OREJEL,) Account Number SR AA 99-381545
dba O K Radiator Air Condition and Muffler) Case ID 529908
Petitioner) Bell Gardens, Los Angeles County

Type of Business: Automotive repair shop

Audit period: 04/01/06 – 03/31/09

<u>Item</u>	<u>Disputed Amount</u>
Negligence penalty	\$3,123
Tax as determined (not protested)	\$31,228.55
Interest through 10/31/12	11,571.73
Negligence penalty	<u>3,122.87</u>
Total tax, interest, and penalty	<u>\$45,923.15</u>
Monthly interest beginning 11/01/12	<u>\$ 156.14</u>

This matter was scheduled for Board hearing in July 2012, but petitioner did not respond to the Notice of Hearing, and the matter was scheduled for decision on the nonappearance calendar. Subsequently, petitioner requested that the matter be rescheduled for hearing.

UNRESOLVED ISSUE

Issue: Whether petitioner was negligent. We find that petitioner was negligent.

Petitioner has operated an automotive repair shop since October 1993. During the majority of the audit period, it operated two locations, and one of those locations is still in operation. For audit, petitioner provided federal income tax returns, profit and loss statements, and quarterly folders containing sales invoices and purchase invoices. The Sales and Use Tax Department (Department) found that the sales invoices in some of the quarterly folders were incomplete. Petitioner stated that the recorded amounts of total sales, parts sales, labor, and sales tax reimbursement were compiled from the source documents in each quarterly folder, using an adding machine. The compiled figures were recorded in the profit and loss statements and used to report sales on the sales and use tax returns.

1 The Department established audited sales on a markup basis, and it found that reported
2 amounts were understated by \$378,527 for the audit period. The Department computed percentages of
3 understatement of 129 percent for 2006, 118 percent for 2007, 202 percent for 2008, and 131 percent
4 for the first quarter 2009. The Department imposed the negligence penalty because petitioner's
5 records were not adequate and because the understatement was significant. Petitioner disputes the
6 penalty, arguing that it maintained records, although it acknowledges the records were disorganized.
7 Petitioner also states it relied on a bookkeeper to compile sales and report accurately.

8 Petitioner did not prepare sales journals or other detail schedules supporting the amounts
9 reported on sales and use tax returns, the available records were disorganized, and the invoices
10 maintained in the quarterly folders were incomplete. The understatement of \$378,527 is significant,
11 and it represents an error ratio of about 153 percent in relation to reported taxable sales of \$248,179.
12 We find that the inadequate records and significant understatement are evidence that petitioner did not
13 exercise due care in recording or reporting. Further, the cost of goods sold recorded on petitioner's
14 profit and loss statements exceeded the total sales of tangible personal property reported on sales and
15 use tax returns by about \$47,000 in 2006, \$15,000 in 2007, \$72,000 in 2008, and \$9,000 for the first
16 quarter 2009. We find that any business person, even one with limited experience, should have
17 recognized that his recorded costs significantly exceeded reported sales throughout the audit period.
18 Accordingly, even though petitioner had not been audited previously, we find that there is ample
19 evidence of negligence, and that the penalty has been properly applied.

20 **OTHER MATTERS**

21 None.

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