

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:)
RODRIGO MORENO INCORPORATED) Account Number SR Y EH 97-780227
Petitioner) Case ID 432710
Riverside, Riverside County

Type of Business: Used car dealer

Audit period: 04/01/03 – 03/31/06

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$436,578		
Disallowed claimed bad debt losses	\$234,541		
Negligence penalty	\$ 6,228		
As determined		\$64,702.28	\$6,470.28
Post-D&R adjustment		- 2,418.63	- 241.87
Proposed redetermination		\$62,283.65	\$6,228.41
Less concurred		- 10,271.93	00.00
Balance, protested		<u>\$52,011.72</u>	<u>\$6,228.41</u>
Proposed tax redetermination		\$ 62,283.65	
Interest through 04/30/12		38,136.43	
Negligence penalty		<u>6,228.41</u>	
Total tax, interest, and penalty		\$106,648.49	
Payments		- 14,122.56	
Balance Due		<u>\$ 92,525.93</u>	
Monthly interest beginning 05/01/12		<u>\$ 280.94</u>	

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported taxable sales. We find no adjustment is warranted.

Petitioner operates a used car dealership. The Sales and Use Tax Department (Department) found that recorded taxable sales exceeded reported amounts by \$436,578. Petitioner disputes this understatement but has provided neither a specific contention nor any supporting documentation.

1 Since the understatement is based on petitioner's own recorded taxable sales and petitioner has not
2 presented any evidence suggesting errors in its records, we find no adjustment is warranted.

3 **Issue 2:** Whether a further adjustment to disallowed claimed bad debts is warranted. We find
4 no further adjustment is warranted.

5 The Department disallowed claimed bad debts of \$265,749. After the appeals conference,
6 petitioner provided additional documents to support a decrease in the disallowed amount. Based on its
7 review of those documents, the Department recommended an adjustment to the disallowed claimed bad
8 debts, and we agreed. The adjustment was made in the reaudit, decreasing disallowed bad debts by
9 \$31,208, from \$265,749 to \$234,541.

10 In a letter dated November 7, 2011, Mr. Juan Guzman, petitioner's representative, disagreed
11 with the Department's computations and contended that a greater adjustment is warranted. We
12 contacted Mr. Guzman by telephone to ascertain the nature of the dispute, and he indicated that the
13 Department did not follow the provisions of California Code of Regulations, section 1642 in
14 computing allowable bad debts. Although he has not provided any written argument or evidence
15 identifying specific errors by the Department, he noted that in the subsequent audit, the Department
16 computed a much lower percentage of error in the amount of claimed bad debts. We asked the
17 Department about the subsequent audit, and we were advised that the method used to compute the
18 allowable amount of bad debts was the same in both audits, and the discrepancy is because petitioner
19 had claimed a significantly lower percentage of one category of amounts claimed as bad debts during
20 the subsequent audit period. Thus, it appears that the difference in the percentage of disallowed
21 claimed bad debts between the audit here and the subsequent audit relates to the amounts claimed by
22 petitioner, and not to the method used by the Department to compute allowable bad debts. In the
23 absence of evidence of errors in the Department's computations, we find no further adjustment is
24 warranted.

25 **Issue 3:** Whether petitioner was negligent. We find that it was.

26 The Department applied a negligence penalty because the errors found in this audit were the
27 same types of errors identified in the prior audit. Petitioner disputes the penalty on the basis that it
28 improved its record keeping procedures after the prior audit.

1 In the prior audit of the period April 1, 2000, through March 31, 2003, the Department found
2 understatements of reported taxable sales and inaccurate reporting of transactions and use taxes, and
3 identical errors were found in this audit. With respect to transactions and use taxes, in both audit
4 periods, petitioner reported Riverside County Transportation Commission tax with respect to all its
5 taxable sales, rather than reporting the Los Angeles County Transportation Commission (LATC) tax
6 for sales of vehicles that were to be registered in Los Angeles County. Although the understatement of
7 \$671,119 (net of the amount subject to LATC) in the reaudit represents only 1.6 percent of reported
8 taxable sales of \$41,576,568, we find that petitioner's failure to report all of the taxable sales it had
9 recorded and its failure to report LATC tax with respect to sales of vehicles that were to be registered
10 in Los Angeles County are evidence that it did not exercise due care in reporting. Therefore, we find
11 the understatement was the result of negligence, and the negligence penalty was properly applied.

12 **OTHER MATTERS**

13 None.

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