

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
MATTHEW HOWARD ROKES, ) Account Number: SR KHM 100-778939  
dba Yreka Extreme Sports ) Case ID 401819  
Petitioner ) Yreka, Siskiyou County

Type of Business: Sales of all-terrain vehicles and motorcycles

Audit period: 01/01/03 – 12/31/05

<u>Item</u>	<u>Disputed Amount</u>		
Disallowed claimed and netted exempt sales	\$267,095		
Negligence penalty	\$ 3,015		
		<u>Tax</u>	<u>Penalty</u>
As determined and proposed to be redetermined:	\$30,151.35		\$3,015.19
Less concurred	<u>- 10,786.96</u>		<u>00.00</u>
Balance, protested	<u>\$19,364.39</u>		<u>\$3,015.19</u>
Proposed tax redetermination	\$30,151.35		
Interest through 4/30/11	12,710.63		
Negligence penalty	<u>3,015.19</u>		
Total tax, interest, and penalty	\$45,877.17		
Payments	<u>- 11,717.28</u>		
Balance Due	<u>\$34,159.89</u>		
Monthly interest beginning 5/1/11	<u>\$ 107.53</u>		

This matter was previously scheduled for Board hearing on January 22, 2009, but was postponed for settlement consideration. It was rescheduled for Board hearing on January 26, 2011, but was postponed at petitioner's request because petitioner's representative had a scheduling conflict.

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments are warranted for exempt sales in interstate commerce. We recommend no adjustment.

Petitioner sells new and used all-terrain vehicles, motorcycles, trailers, and related accessories in Yreka, California, which is approximately 30 miles from the Oregon border. Based on

1 reconciliations with sales reported on income tax returns and sales recorded in the profit and loss  
2 statements, the Sales and Use Tax Department (Department) found that petitioner had not reported all  
3 of his sales on his sales and use tax returns. However, petitioner's records were not sufficiently  
4 detailed and complete for the Department to determine which sales had been reported and which had  
5 not. During the audit, petitioner contended that \$272,164 of the difference established by audit  
6 represented 38 sales that were exempt sales in interstate commerce, \$121,962 of which had been  
7 claimed as exempt sales on returns and the remainder having been netted from reported sales.  
8 According to the Department, petitioner's records for these transactions consisted of various  
9 combinations of dealer jackets, sales invoices, and credit applications. The Department concluded that  
10 the available documentation was sufficient to show that two of the sales, totaling \$5,069, were exempt  
11 sales in interstate commerce. The Department disallowed the remaining claimed sales in interstate  
12 commerce of \$267,095 (\$272,164 – \$5,069).

13         Petitioner contends that all the disputed sales were exempt sales in interstate commerce,  
14 asserting that he personally delivered each vehicle to the purchaser outside this state pursuant to an oral  
15 term of sale. According to petitioner, he reached an agreement with each customer during a telephone  
16 conversation while the customer was located in Oregon and agreed to meet the purchaser to make the  
17 delivery in Oregon. Petitioner acknowledges that he has no records from the time of delivery to show  
18 when or where any of the deliveries were made. Rather, petitioner has submitted 20 statements,  
19 obtained in January, March, and April 2007, in which the purchasers state they took delivery at  
20 particular out-of-state locations (all in Oregon except for one in Colorado). However, petitioner states  
21 that the delivery locations indicated on the statements corresponded with his recollection for only 10 of  
22 the transactions. For three of the remaining sales, petitioner cannot recall the exact delivery location  
23 and, for seven sales, he claims that the delivery location was somewhere outside California other than  
24 the location identified by the purchaser.

25         Petitioner has provided no evidence of delivery of the vehicles outside California except for the  
26 post-sale statements, nor has petitioner provided copies of sales invoices or other evidence to show that  
27 the contracts required him to make delivery at any location other than his store in California. That is,  
28 for 16 of the 36 disputed sales, including five sales for which the purchasers provided a California

1 address or telephone number, there is no documentary evidence whatsoever that the transactions were  
2 exempt sales in interstate commerce. As for the other 20 sales, the only documentary evidence is the  
3 statements from the purchasers obtained well after the sales at issue, specifically for the purpose of  
4 avoiding tax liability, without any other evidence, such as credit card statements, gas receipts, meal  
5 receipts, or weight fees paid. We find that petitioner has not satisfactorily established that any of the  
6 36 sales were exempt sales in interstate commerce. (As discussed in the D&R, if the sales were not  
7 subject to sales tax, we would alternatively find petitioner was liable for use tax pursuant to the  
8 presumption of Revenue and Taxation Code section 6247 in connection with the nine sales to  
9 purchasers he knew were California residents.)

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

11 The Department imposed a 10-percent negligence penalty because it concluded that petitioner  
12 did not maintain the usual business journal or ledgers normally maintained by similar vehicle dealers.  
13 The Department also states that the available summary records were not supported by source  
14 documents or detailed records of individual sales, and there were numerous conflicts in the available  
15 records. Petitioner disputes the penalty on the basis that this was the first business he owned.  
16 Petitioner states he is a disability-retired deputy sheriff who had no tax training and did not fully  
17 understand the tax laws. Further, he stated that he provided an Excel spreadsheet, which was his sales  
18 journal, but the Department did not understand that document.

19 At the conference, neither petitioner nor his representative was able to adequately explain the  
20 Excel spreadsheet, and they requested additional time after the conference to provide such explanation.  
21 However, no further explanation has been provided. Petitioner has been unable to produce or account  
22 for a significant amount of important sales records, and his asserted sales journals are in such a state  
23 that even he and his certified public accountant cannot explain them or reconcile them to the filed tax  
24 returns. Additionally, petitioner is unable to identify the source of the amounts that he did report on  
25 sales and use tax returns, which resulted in a \$407,705 understatement of taxable sales, which  
26 represents an error ratio of almost 20 percent when compared to reported taxable sales of \$2,078,059.  
27 We find that the error, which is substantial both as an absolute amount and in relation to reported  
28 figures, represents additional evidence of negligence. Accordingly, we find petitioner did not exercise

1 the degree of care in record-keeping or reporting of a reasonably prudent vehicle dealer, and that the  
2 understatement was the result of negligence.

3 **OTHER DEVELOPMENTS**

4 None.

5  
6 Summary prepared by Pete Lee, Business Taxes Specialist II  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28