

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

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| In the Matter of the Petition for Redetermination )<br>Under the Sales and Use Tax Law of: )<br>)<br>SANITECH CORPORATION )<br>)<br>Petitioner ) | Account Number: SC OHB 101-010360<br>Case ID 477146<br>)<br>Lorton, VA |
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Type of Business:     Manufacturer and seller of sanitation systems

Audit period:         4/1/03 – 9/30/07

| <u>Item</u>                         | <u>Disputed Amount</u> | <u>Tax</u>         | <u>Penalty</u>  |
|-------------------------------------|------------------------|--------------------|-----------------|
| Unreported sales                    | \$116,631              |                    |                 |
| As determined:                      |                        | \$9,763.45         | \$976.39        |
| Post-D&R adjustment                 |                        | - 490.48           | - 49.04         |
| Proposed redetermination, protested |                        | <u>\$9,272.97</u>  | <u>\$927.35</u> |
| Proposed tax redetermination        |                        | \$9,272.97         |                 |
| Interest through 04/30/12           |                        | 5,121.01           |                 |
| Failure-to-file penalty             |                        | <u>927.35</u>      |                 |
| Total tax, interest, and penalty    |                        | \$15,321.33        |                 |
| Payments                            |                        | - 323.12           |                 |
| Balance Due                         |                        | <u>\$14,998.21</u> |                 |
| Monthly interest beginning 05/01/12 |                        | <u>\$ 52.21</u>    |                 |

This matter was presented to the Board on a nonappearance calendar on July 27, 2011, and the Board adopted the recommendation of the Appeals Division. Petitioner filed a timely petition for rehearing, which was granted by the Board on December 14, 2011. The matter was scheduled for hearing in March 2012, but was postponed at petitioner’s request due to a scheduling conflict.

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner was engaged in business in California during the determination period requiring it to collect use tax in connection with its sales to California purchasers. We find that it was and recommend no adjustment.

1 The Sales and Use Tax Department (Department), relying on a questionnaire completed by  
2 petitioner in February 2007, an Application for Certificate of Registration – Use Tax Account  
3 submitted by petitioner in November 2007, and information obtained from petitioner’s website in  
4 February 2009, concluded that petitioner was engaged in business in California and owed the use tax it  
5 was required to have collected with respect to its sales to California purchasers during the  
6 determination period. The Department established the amount of the determination based on a list of  
7 shipments to California purchasers furnished by petitioner, and imposed a 10-percent penalty for  
8 failure to file tax returns.

9 Petitioner contends that it was not engaged in business in this state during the determination  
10 period; that it is not liable for use tax because the subject sales were made from trade shows outside of  
11 California or to or through dealers; and that it shipped all products directly from its Virginia factory to  
12 the California purchaser via common carrier. Petitioner alleges that it did not maintain a physical  
13 presence in California, and that the “unauthorized” Internet website misrepresents petitioner and is  
14 offered by someone not connected with petitioner.

15 Petitioner has identified Mr. Ed O’Day of Waste Reduction System International (WRS) as its  
16 independent contractor in this state, and has acknowledged that Mr. O’Day solicited orders or provided  
17 assistance or training to California purchasers. Both petitioner’s and WRS’s websites indicate that  
18 Mr. O’Day is the manager of petitioner’s California regional office. We find that the evidence  
19 overwhelmingly establishes that petitioner had a representative in this state operating under its  
20 authority for the purpose of selling its products in California during the period in question. Thus,  
21 petitioner was engaged in business in California and was required to collect the applicable use tax with  
22 respect to its sales to California consumers.

23 **Issue 2:** Whether petitioner has established that further reduction to the measure of tax is  
24 warranted. We find that it has not.

25 Petitioner contends that the list of shipments to California purchasers includes nontaxable or  
26 exempt sales, or that the taxes have otherwise been paid. Specifically, petitioner alleges that a sale to  
27 Federal Corrections (\$6,700) was an exempt sale to the U.S. Government; that sales to Recoverx  
28 (\$3,677), TXG Sales (\$5,015), and Accurate Equipment Sales Company (\$3,628) were sales to dealers

1 for resale; that sales to Santa Monica Civic Auditorium (\$2,986), Capistrano Unified School District  
2 (\$5,675), Northrup Grumman (\$4,895), and LAC/USC Healthcare Network (\$8,000), were sales for  
3 resale through dealers Waxie, J. P. Duncan, Aramark, and Morrison Healthcare Foodservice,  
4 respectively; and that purchasers Bridgeford Foods (\$4,946) and Bumble Bee Foods (\$6,735) verbally  
5 confirmed that they paid the taxes directly to the Board.

6 Petitioner's claims for exemption or non-taxability are not supported by the required  
7 documentation. Petitioner has not provided a purchase order or other evidence to show that the sale it  
8 alleges was made to the U.S. Government related to a GSA contract. Petitioner has not provided  
9 timely resale certificates, XYZ letter responses, or other evidence to support the alleged sales for  
10 resale, and the Department has indicated that it could not locate active seller's permits for the alleged  
11 retailers. Petitioner has not provided written confirmation or other evidence from the purchasers to  
12 support their verbal statements that use tax was self-declared and paid to the Board. Accordingly, we  
13 find no adjustment is warranted.

14 **RESOLVED ISSUE**

15 Petitioner has provided evidence that it paid use tax on one of the transactions assessed, and the  
16 Department has confirmed receipt of that payment.

17 **OTHER MATTERS**

18 Petitioner incurred a failure-to-file penalty because it did not file returns. Although we advised  
19 petitioner it could request relief of this penalty, it has not done so. Accordingly, we have no basis to  
20 consider recommending relief.

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