

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:)
STAR CELLULAR, INC.) Account Number: SR GH 100-570675
Petitioner) Case ID 520976
San Jose, Santa Clara County

Type of Business: Retailer of cellular phones
Audit period: 04/01/06 – 03/31/09

<u>Item</u>	<u>Disputed Amount</u>
Understatement of reported taxable sales	\$136,982
Tax as determined and proposed to be redetermined	\$18,488.79
Less concurred	<u>- 7,187.75</u>
Balance, protested	<u>\$11,301.04</u>
Proposed tax redetermination	\$18,488.79
Interest through 11/30/11	<u>5,114.26</u>
Total tax and interest	\$23,603.05
Payments	<u>- 421.55</u>
Balance Due	<u>\$23,181.50</u>
Monthly interest beginning 12/1/11	<u>\$ 90.34</u>

UNRESOLVED ISSUE

Issue: Whether adjustments are warranted to the understatement of reported taxable sales. We find no adjustment is warranted.

Petitioner was a retailer of cellular phones and other wireless communication devices from May 9, 2005, through September 30, 2010. Almost all of petitioner’s retail sales of cellular phones were part of bundled transactions, with the cellular phones sold at a discounted price as an inducement for the customer to enter into an extended service contract with a wireless telecommunications provider. Petitioner’s detailed transaction report and sales invoices showed a “list price” of each cellular phone, followed by a separate credit for the applicable discount, resulting in the discounted price charged for the phone. The Sales and Use Tax Department (Department) found that, prior to January 1, 2008, petitioner properly reported and paid sales tax based on the unbundled prices of

1 cellular phones sold in bundled transactions. However, in January 2008, petitioner began to charge
2 sales tax reimbursement only on the discounted price and to report that amount of tax on its returns.
3 Accordingly, the Department used the list prices shown in petitioner's records to compile total
4 unbundled sales prices of \$232,496 for the period January 1, 2008, through March 31, 2009, and
5 compared that amount to reported taxable sales of \$95,514 to compute an understatement of \$136,982.

6 Petitioner states that, in January 1, 2008, it began using a template provided by its franchisor,
7 Sprint, which automatically calculated sales tax reimbursement on the discounted prices of the cellular
8 phones. Petitioner therefore contends that it is not liable for tax with respect to the audited
9 understatement because it was following the practices and instructions of its franchisor. Petitioner also
10 contends that the tax liability would impose a severe financial hardship.

11 California Code of Regulations, title 18, section (Regulation) 1585, sets out specific rules for
12 the tax treatment of sales of cellular phones providing, as relevant here, that tax applies to the gross
13 receipts from the retail sale of a wireless telecommunication device sold in a bundled transaction
14 measured by the unbundled sales price of that device. Here, all disputed sales were bundled
15 transactions, and we thus find that the Department has correctly established the taxable measure of
16 those sales based on the unbundled price of the wireless communication devices, as required by
17 Regulation 1585. Petitioner has not provided any evidence of errors in the Department's
18 computations, and we have found none. There is no basis for relief based on incorrect advice from a
19 franchisor or other advisor outside the Board, nor based on severe financial hardship (the D&R does
20 mention the options of pursuing settlement or an offer in compromise).

21 **OTHER DEVELOPMENTS**

22 None.

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