

**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: )  
SWEETHEART CABINET MAKERS, INC. ) Account Number SR JH 97-128038  
Case ID 387045  
Petitioner ) Calistoga, County

Type of Business: Cabinet manufacturer and installer

Liability period: 11/19/04 – 06/30/06

<u>Item</u>	<u>Disputed Amount</u>																				
Unreported sales	\$1,119,187																				
	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Tax</u></th> <th style="text-align: right;"><u>Penalty</u></th> </tr> </thead> <tbody> <tr> <td>As determined</td> <td style="text-align: right;">\$109,556.33</td> </tr> <tr> <td>Adjustment - Sales and Use Tax Department</td> <td style="text-align: right;">- 16,529.74</td> </tr> <tr> <td>Proposed redetermination</td> <td style="text-align: right;">\$ 93,026.59</td> </tr> <tr> <td>Less concurred</td> <td style="text-align: right;">- 5,585.31</td> </tr> <tr> <td>Balance, protested</td> <td style="text-align: right;"><u>\$ 87,441.28</u></td> </tr> <tr> <td>Proposed tax redetermination</td> <td style="text-align: right;">\$ 93,026.59</td> </tr> <tr> <td>Interest through 03/31/12</td> <td style="text-align: right;"><u>48,895.95</u></td> </tr> <tr> <td>Total tax and interest</td> <td style="text-align: right;"><u>\$141,922.54</u></td> </tr> <tr> <td>Monthly interest beginning 04/01/12</td> <td style="text-align: right;"><u>\$ 542.66</u></td> </tr> </tbody> </table>	<u>Tax</u>	<u>Penalty</u>	As determined	\$109,556.33	Adjustment - Sales and Use Tax Department	- 16,529.74	Proposed redetermination	\$ 93,026.59	Less concurred	- 5,585.31	Balance, protested	<u>\$ 87,441.28</u>	Proposed tax redetermination	\$ 93,026.59	Interest through 03/31/12	<u>48,895.95</u>	Total tax and interest	<u>\$141,922.54</u>	Monthly interest beginning 04/01/12	<u>\$ 542.66</u>
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This matter was scheduled for Board hearing in December 2011, but was postponed at petitioner's request because of a scheduling conflict.

**UNRESOLVED ISSUE**

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

Petitioner manufactured and installed prefabricated cabinets and made retail sales of cabinets it did not install. Petitioner held a seller's permit that was effective July 1, 1997, through September 30, 2006. It filed bankruptcy in November 2004, and the bankruptcy was closed December 19, 2008.

1 The Sales and Use Tax Department (Department) found that the amount of gross receipts  
2 petitioner reported to the bankruptcy court for the period at issue exceeded the amounts it had reported  
3 on sales and use tax returns. The Department used the amount of gross receipts reported to the  
4 bankruptcy court and, using a 75.18 percent taxable ratio based on a prior audit of petitioner,  
5 determined an understatement of reported taxable sales of \$1,408,624. After the Notice of  
6 Determination was issued, petitioner submitted additional documentation, and the Department adjusted  
7 the unreported amount to \$1,190,675, consisting of \$565,917 of taxable sales petitioner stated it had  
8 intended to report for the fourth quarter 2006, \$553,271 which were characterized as deposits and  
9 progress payments on incomplete contracts, and \$71,488 of conceded unreported taxable sales.<sup>1</sup> The  
10 Department also removed the negligence penalty.

11 Petitioner contends that the amount it stated it had intended to report for the fourth quarter 2006  
12 was overstated. As support, petitioner submitted an invoice that petitioner claims was included in  
13 error, and stated it could provide additional invoices that represented errors. With respect to the  
14 amount petitioner characterized as having come from incomplete projects, petitioner asserts the  
15 amount was not taxable because it did not represent sales of tangible personal property. Petitioner  
16 asserts that it did not actually deliver and install any cabinets until the very end of the job, after the  
17 final payment. As support, petitioner provided three contracts including a schedule reflecting a 50  
18 percent non-refundable deposit and two or three progress payments. The Department stated that, in the  
19 prior audit, there was evidence petitioner made partial deliveries of cabinets during the course of a job  
20 but that petitioner waited until the job was complete before reporting the sale on its sales and use tax  
21 return.

22 The D&R recommends a reaudit to give petitioner the opportunity to provide documentation to  
23 support its claims that there were no deliveries of tangible personal property in connection with the  
24 amounts it claims were nontaxable as having come from incomplete projects. We also recommended  
25 that the Department review all records provided by petitioner to determine if adjustments were  
26 warranted for refunds to customers, and if deposits received prior to November 19, 2004, should have

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28 <sup>1</sup> The \$1 difference due to rounding.

1 been included in the liability because they represented partial payments on sales made during the  
2 liability period. In lieu of producing additional records for the reaudit, petitioner notified the  
3 Department that it was unable to locate any additional records. In the absence of records, we find no  
4 adjustment is warranted.

5 **OTHER MATTERS**

6 None.

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