

**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: )  
FRANCES PHUONG TSU, dba Migi-Global ) Account Number SR EA 100-366093  
Petitioner ) Case ID 535710  
Huntington Beach, Orange County

Type of Business: Retailer of cellular phones  
Audit period: 01/01/07 – 12/31/09

| <u>Item</u>                         | <u>Disputed Amount</u> |
|-------------------------------------|------------------------|
| Unreported taxable sales            | \$608,871              |
| Tax as determined and protested     | \$48,942.36            |
| Interest through 02/28/14           | <u>18,763.42</u>       |
| Total tax and interest              | <u>\$67,705.78</u>     |
| Monthly interest beginning 03/01/14 | <u>\$ 244.71</u>       |

This matter was scheduled for Board hearing in October 2013, but was postponed at petitioner’s request for additional time to prepare.

**UNRESOLVED ISSUE**

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

Petitioner sold cellular (cell) phones and wireless cell phone service as an authorized T-Mobile dealer from February 2004 through December 2011. The majority of petitioner’s sales of phones were bundled transactions (sales of phones at a reduced price along with a contract that required the customer to activate service with T-Mobile for a period greater than one month). When petitioner sold phones in bundled transactions, she reported tax on the stated selling price of the phones, which was substantially less than the purchase cost of the phones.

The Sales and Use Tax Department (Department) found that petitioner’s reported sales of

1 phones in bundled transactions were understated.<sup>1</sup> Since petitioner sold most phones in bundled  
2 transactions, there was insufficient data to establish the price at which petitioner would have sold the  
3 same phones without any requirement to activate cell phone service as a condition of the sale.  
4 Accordingly, the Department decided to establish audited taxable sales of phones in bundled  
5 transactions on a markup basis, applying an 18 percent markup.<sup>2</sup> (See Cal. Code Regs., tit. 18, § 1585,  
6 subds. (a)(4), (b)(3).)

7 Petitioner does not dispute the calculated understatement of reported taxable sales of \$608,871.  
8 Instead, petitioner contends that she should not be liable for the tax, arguing that it is unfair for her to  
9 be required to pay tax that she did not collect from her customers. Petitioner also asserts that she was  
10 unaware of the application of tax to the unbundled selling price of cell phones that were sold in  
11 bundled transactions. Further, petitioner states that she is unable to pay the liability.

12 The Department has properly established the taxable measure, as petitioner's gross receipts  
13 from the sale of cell phones based on the unbundled sales price of the cell phones, and that figure is not  
14 in dispute. (Cal. Code Regs., tit. 18, § 1585, subd. (b)(3).) As the retailer, petitioner is liable for the  
15 sales tax, regardless of whether or not she collected sales tax reimbursement from her customers, since  
16 sales tax is imposed on the retailer, not the purchaser. (Rev. & Tax Code, § 6051.) Further, there is no  
17 exemption, exclusion or other provision in the Sales and Use Tax Law that relieves a taxpayer from  
18 liability based on ignorance of the law.<sup>3</sup> Similarly, petitioner's asserted inability to pay does not alter  
19 the liability. Accordingly, we find that no adjustment to unreported taxable sales is warranted.  
20 However, we have explained to petitioner that the Board has provisions for installment payment plans  
21 and have provided information regarding the Offer in Compromise Program.

## 22 OTHER MATTERS

23 None.

24 Summary prepared by Lisa Burke, Business Taxes Specialist III  
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26 <sup>1</sup> For phones petitioner sold in unbundled transactions, she correctly reported tax on the selling price.

27 <sup>2</sup> Before applying the 18 percent markup, the Department reduced petitioner's cost of goods sold by 1 percent for pilferage  
and by petitioner's reported purchases subject to use tax of \$52,897.

28 <sup>3</sup> In addition, there were at least two Tax Information Bulletins mailed to holders of seller's tax permits during the time  
petitioner operated her business that explained the application of tax to unbundled sales of cell phones.

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**MARKUP TABLE**

|   |         |
|---|---------|
| Percentage of taxable vs. nontaxable purchases      | 100%    |
| Mark-up percentages developed                       | 18%     |
| Self-consumption allowed in dollars                 | None    |
| Pilferage allowed in dollars                        | \$6,124 |
| Pilferage allowed as a percent of taxable purchases | 1%      |