

**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: )  
UNION OUTLET, INC. ) Account Number SR AS 100-507178  
) Case ID 547465  
)  
Petitioner ) Los Angeles, Los Angeles County

Type of Business: Clothing wholesaler

Audit period: 1/1/06 – 12/31/08

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed sales for resale	\$ 676,498
Disallowed claimed sales in interstate commerce	\$1,226,316
Unreported sales	\$ 10,149
Negligence penalty	\$ 15,782
Tax as determined and protested	\$157,819.48
Interest through 4/30/12	54,998.01
Negligence penalty	<u>15,781.96</u>
Total tax, interest, and penalty	<u>\$228,599.45</u>
Monthly interest beginning 5/1/12	<u>\$920.61</u>

A Notice of Appeals Conference was mailed to petitioner's address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the opportunity to provide any additional arguments and evidence in writing it wished us to consider, but it did not respond.

**UNRESOLVED ISSUES**

**Issue 1:** Whether petitioner has established that it made any sales for resale during the audit period. We find it has not.

Petitioner reported total sales of \$2,327,870, claiming \$676,498 as nontaxable sales for resale and \$1,651,372 as exempt sales in interstate commerce, thereby reporting no taxable sales for the audit period. Petitioner provided partial sales invoices for 2007, customer purchase orders, and shipping documents for audit, but did not provide any sales journals or summary records. No resale certificates

1 or other documentation were provided in support of petitioner's claimed sales for resale, so the Sales  
2 and Use Tax Department (Department) disallowed all \$676,498 of petitioner's claimed sales for resale.  
3 Petitioner contends that it is a wholesaler, and does not make any retail sales. However, it is not  
4 sufficient to just assert all sales were for resale; petitioner has the burden of establishing that its  
5 claimed sales for resale were in fact sales for resale. Since petitioner has not done so, we conclude no  
6 adjustment is warranted to this audit item.

7 **Issue 2:** Whether petitioner has established that any of the disallowed claimed exempt sales in  
8 interstate commerce actually qualified for the exemption. We find it has not.

9 The Department found that petitioner had shipping documents to support \$15,276 in exempt  
10 interstate commerce sales for the June 2007 test period. Compared to petitioner's average monthly  
11 claimed interstate commerce sales of \$59,348 for 2007, the Department computed disallowed claimed  
12 interstate commerce sales of \$44,072, representing an error rate of 74.26 percent. The Department  
13 applied the error rate to petitioner's claimed interstate commerce sales of \$1,651,372, and established  
14 \$1,226,316 in disallowed claimed exempt sales in interstate commerce for the audit period. Petitioner  
15 repeats its contention that it was a wholesaler and not a retailer, and asserts that these particular sales  
16 qualified for the interstate commerce exemption. Petitioner has the burden of establishing that its sales  
17 were for resale or exempt from tax. Since the Department used a valid method to compute petitioner's  
18 allowable deductions for exempt sales in interstate commerce, we conclude that no adjustment is  
19 warranted to this audit item.

20 **Issue 3:** Whether petitioner has established that the amount of unreported sales is overstated or  
21 for nontaxable sales. We find that it has not.

22 The Department compared petitioner's gross receipts from its federal income tax returns to the  
23 total sales reported in its sales and use tax returns and found that the former exceeded the latter by  
24 \$10,149 for the audit period. The Department determined that the \$10,149 difference was unreported  
25 sales subject to sales tax.

26 Petitioner's only argument about this audit item is that it is a wholesaler and does not make any  
27 retail sales, but it has failed to show that the gross receipts reported on its federal income tax returns  
28

1 were overstated, or that the unreported gross receipts determined by this comparison were from  
2 nontaxable sales. We conclude that no adjustment is warranted to this audit item.

3 **Issue 4:** Whether petitioner was negligent. We find that it was.

4 Although petitioner has not specifically disputed the negligence penalty, for purposes here, we  
5 treat it as disputed. Petitioner provided only partial sales invoices, customer purchase orders, and  
6 shipping documents from 2007, and copies of its federal income tax returns. We find petitioner's  
7 inadequate record keeping is far below that expected from a reasonably prudent businessperson, even  
8 one who has not previously been audited. Petitioner reported zero taxable sales, compared to audited  
9 taxable sales of over \$1.9 million, which constitutes over 80 percent of petitioner's gross receipts. Not  
10 only is the understatement substantial in amount, but reporting zero taxable sales without  
11 documentation to establish that 80 percent of those sales are nontaxable is clearly negligent. We  
12 conclude the penalty was properly imposed.

13 **OTHER MATTERS**

14 None.

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16 Summary prepared by Pete Lee, Business Taxes Specialist II  
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