

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 UNITED SPAS MANUFACTURING, INC.) Account Number: SR Y KH 100-069189
 6) Case ID 389563
 7 Petitioner) Salida, Stanislaus County

8 Type of Business: Retailer of spas and spa parts

9 Audit period: 01/01/03 – 03/31/06

10 <u>Item</u>	<u>Disputed Amount</u>	
11 Difference between recorded and reported taxable sales	\$ 183,721	
12 Disallowed claimed nontaxable sales for resale	\$1,264,221	
12 Disallowed claimed exempt interstate commerce sales	\$ 75,335	
	<u>Tax</u>	<u>Penalty</u>
14 As determined:	\$147,237.69	\$14,723.78
15 Adjustment - Sales and Use Tax Department	-10,381.81	-14,723.78
15 - Appeals Division	-7,842.66	
16 Proposed redetermination, protested	<u>\$129,013.22</u>	<u>\$0.00</u>
17 Proposed tax redetermination	\$129,013.22	
17 Interest through 12/31/10	<u>63,763.17</u>	
18 Total tax and interest	\$192,776.39	
18 Payments	<u>-30,087.68</u>	
19 Balance Due	<u>\$162,688.71</u>	
20 Monthly interest beginning 1/1/11	<u>\$577.07</u>	

21 This matter was previously scheduled for Board hearing on May 26, 2010, but was postponed
 22 to allow petitioner additional time to gather information.

23 UNRESOLVED ISSUES

24 **Issue 1:** Whether adjustments are warranted to the understatement of reported taxable sales
 25 based on a reconciliation with recorded taxable sales. We recommend no further adjustments.

26 Petitioner sells spas and spa parts. The Department reviewed petitioner's general ledgers, sales
 27 journals, Profit and Loss Statements, and sales invoices, and compiled recorded taxable sales for the
 28 audit period. In the audit, the Department found that recorded taxable sales exceeded the reported

1 amount by \$321,836. During the first reaudit, petitioner provided revised general ledgers that
2 supported petitioner's position that the recorded amounts used in the audit were overstated due to
3 double posting of some down payments. Based on its review of the revised records, the Department
4 reduced the difference between recorded and reported taxable sales to \$183,721. Petitioner contends
5 that the audited difference between recorded and reported taxable sales should be further reduced due
6 to additional posting errors not considered by the Department. However, petitioner has not identified
7 any specific additional posting errors.

8 Petitioner has not identified any further specific errors in its records or provided a satisfactory
9 explanation for the difference of \$183,721 between its recorded and reported sales. In the absence of
10 clear, detailed evidence of errors, we find there is no basis to disregard petitioner's own records. Thus,
11 we recommend no adjustment.

12 **Issue 2:** Whether adjustments are warranted to the disallowed claimed nontaxable sales for
13 resale. We recommend no further adjustments.

14 The Department examined all claimed nontaxable sales for resale for the fourth quarter 2005
15 and found 18 for which petitioner did not provide adequate documentation. Petitioner did not provide
16 any documentation for four of the sales at issue, and for the remaining 14 sales, the Department
17 concluded the documentation was insufficient. In the D&R, we found that one of the transactions
18 should be accepted as a valid nontaxable sale, and that the percentage of error should be reduced
19 accordingly. Thus, there are 17 disallowed claimed sales for resale that remain in dispute.

20 None of the four purchasers for whom petitioner provided no source documents were in the
21 business of selling spas, and petitioner has provided no evidence that the sales were for resale. Absent
22 evidence to the contrary, we find these customers purchased the spas for their own use. For eight of
23 the disputed sales, petitioner provided either an invoice with a seller's permit number written on it or a
24 copy of the purchaser's seller's permit, but did not provide a resale certificate. For the remaining five
25 disputes sales, petitioner provided incomplete resale certificates, each of which lacked key, required
26 information. Since petitioner did not provide timely, valid resale certificates, these 13 sales are
27 presumed to be taxable. None of the 13 purchasers was in the business of selling spas, and petitioner
28 has not provided evidence that the items purchased by these 13 purchasers were sold or are being held

1 in resale inventory, or that any of the purchasers remitted tax directly to the Board. Accordingly, we
2 find that petitioner has not provided evidence to overcome the presumption that the sales were subject
3 to tax, and we recommend no further adjustments.

4 **Issue 3:** Whether adjustments are warranted to the disallowed claimed exempt sales in
5 interstate commerce. We recommend no further adjustments.

6 The Department examined all claimed exempt sales in interstate commerce for the audit period
7 and concluded that there was insufficient documentation of out-of-state delivery for 34 of those sales.
8 Following the appeals conference, petitioner submitted additional documentation regarding 17 of those
9 34 sales. Based on that evidence, the Department concluded that 12 of the 17 sales were in fact
10 exempt sales in interstate commerce and one was a nontaxable sale for resale. The Department
11 therefore recommended a reduction in the disallowed exempt sales in interstate commerce, from
12 \$120,573 to \$75,335.

13 Based on the available evidence, the Department concluded that the remaining four sales for
14 which petitioner submitted additional documentation were subject to tax. Petitioner contends that
15 these four sales were exempt sales in interstate commerce based on the documents it provided to show
16 that the merchandise was delivered to the customers outside California. Petitioner has not raised any
17 specific arguments regarding the 17 sales for which no additional evidence has been presented and we
18 find that there is insufficient evidence to establish that these were exempt sales in interstate commerce.

19 With respect to the four remaining disputed sales for which petitioner provided additional
20 information, we find they were subject to either sales tax (because the sale occurred in California) or
21 use tax (because the merchandise was delivered outside California to a customer known to petitioner as
22 a California resident). Accordingly, we recommend no further adjustments.

23 **RESOLVED ISSUE**

24 After the first reaudit, the Department concluded that the understatement was not the result of
25 negligence. Accordingly, the negligence penalty has been deleted.

26 **OTHER DEVELOPMENTS**

27 None.

28 Summary prepared by Rey Obligacion, Retired Annuitant