

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:)
VETCO, INC., dba Twin Anchor Boats & Yachts) Account Number SR FH 100-373619
Petitioner) Case ID 488964
San Diego, San Diego County

Type of Business: Sales of vessels and accessories

Audit period: 04/01/04 – 06/30/07

<u>Item</u>	<u>Disputed Amount</u>
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Relief of interest	not specified
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Tax as determined	\$94,911.30
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Post-D&R adjustment	<u>- 28,860.45</u>
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Proposed redetermination	\$66,050.85
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Less concurred	<u>- 66,050.85</u>
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Balance, protested	<u>\$ 00.00</u>
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Proposed tax redetermination	\$ 66,050.85
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Interest through 07/31/13	<u>40,815.38</u>
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Total tax and interest	\$106,866.23
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Payments	<u>- 1,716.62</u>
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Balance Due	<u>\$105,149.61</u>
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Monthly interest beginning 08/01/13	<u>\$ 321.67</u>
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UNRESOLVED ISSUE

Issue: Whether relief of interest is warranted. We find relief is not warranted.

Petitioner sells vessels, trailers, and accessories. The Sales and Use Tax Department (Department) found that recorded taxable sales exceeded reported amounts by \$1,006,725. The Department also disallowed two claimed exempt sales in interstate commerce, totaling \$208,500. As more fully explained under “Resolved Issue,” the first amount has been reduced from \$1,006,725 to \$844,354, and the second audit item has been deleted, based on additional documentation provided at the appeals conference.

Petitioner’s only remaining dispute is its request for relief of interest for the period January 22, 2007, through April 16, 2009 (from the date the audit was assigned to the district to the date the Notice

1 of Determination (NOD) was issued). Petitioner asserts that there was an unreasonable delay in
2 determining the amount of tax due because of the length of time it took the Department to process and
3 complete the audit. Specifically, petitioner states that there was a delay of more than two months from
4 the date the audit was assigned to the district until the date the audit was initiated, and that, at some
5 point the audit was expanded to include the first and second quarters of 2007, which caused additional
6 delays in processing the audit. Petitioner also argues that the reassignment to a different auditor
7 (because the original lead auditor was on an extended leave of absence) caused additional delays.
8 Further, petitioner asserts that it provided documentation to support a refund of approximately \$53,000
9 in June 2007, although the amount of overpayment, which was less than \$53,000, was not verified by
10 the Department until July 2008.

11 We have reviewed the assignment contact history and other relevant documents in the audit
12 workpapers, and we find that petitioner requested numerous extensions to allow time to provide
13 additional records. Petitioner requested additional extensions because it replaced its bookkeeper or
14 representative four times before the audit was completed. The records indicate that from March 2007,
15 when the audit was assigned to the auditor, until November 2007, there was relatively constant activity
16 on the audit, and that any delays were primarily the result of petitioner's requests for extensions.
17 Petitioner has correctly noted that the audit was reassigned in December 2007 because the lead auditor
18 was on an extended leave of absence, but we do not find that the requirement to reassign the audit
19 under those circumstances represents an unreasonable delay. Petitioner requested various extensions
20 during the period December 2007 through June 2008, and the audit was turned in for review on
21 July 22, 2008. On August 21, 2008, the Department requested additional documentation from
22 petitioner regarding issues that were raised during review. Petitioner requested additional time to
23 provide that documentation, and it then requested additional delays when it fired its bookkeeper in
24 September 2008 and when it replaced its representative twice in November 2008. The audit was
25 turned in on December 15, 2008, and review was completed January 21, 2009. The Department
26 discussed the audit with petitioner in February 2009 and issued a revised audit report on March 25,
27 2009. The NOD was issued April 16, 2009. Accordingly, we find there was no unreasonable delay by
28 a Board employee at any point during the audit period. Further, we find that any delays that did occur

1 were, in substantial part, the result of petitioner's actions. Consequently, we find that petitioner has
2 not established that relief of interest is warranted because of unreasonable delay by a Board employee.

3 **RESOLVED ISSUE**

4 In the petition for redetermination, petitioner protested the audited amount of difference
5 between recorded and reported taxable sales and the disallowed claimed exempt sales in interstate
6 commerce. At the appeals conference, petitioner provided evidence that five vessel sales had been
7 recorded twice. The Department reviewed the documentation and verified the duplications in the
8 records for those five sales. Petitioner also provided evidence which was sufficient to show that the
9 disallowed exempt sales were in fact sales in interstate commerce. Accordingly, we recommended a
10 reduction of \$162,371 in the audited amount of difference between recorded and reported taxable sales
11 and recommended that the disallowed exempt sales interstate commerce of \$208,500 be deleted. Thus,
12 the total understatement of reported taxable measure was reduced from \$1,215,225 to \$844,354, and
13 petitioner concurs with the adjusted amount.

14 **OTHER MATTERS**

15 None.

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