

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:)
THOMAS L. WHITE)
Petitioner)

Account Number: SR AS 53-004574
Case ID 476399

San Bernardino, San Bernardino County

Type of Liability: Responsible person liability

Liability period: 04/01/02 – 10/31/02

Item Disputed Amount

Unreported taxable sales \$156,755
Penalties \$ 3,829

Tax Penalty

As determined	\$17,656.00	\$5,477.96
Adjustment - Appeals Division	00.00	-1,649.26
Proposed redetermination, protested	\$17,656.00	\$3,828.70
Less concurred	- 4,724.19	00.00
Balance, protested	<u>\$12,931.81</u>	<u>\$3,828.70</u>
Proposed tax redetermination	\$17,656.00	
Interest through 02/29/12	13,788.91	
Late payment penalty	297.50	
Failure-to-file penalties	1,765.60	
Finality penalties	<u>1,765.60</u>	
Total tax, interest, and penalty	<u>\$35,273.61</u>	
Monthly interest beginning 03/01/12	<u>\$ 102.99</u>	

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported taxable sales. We find no adjustment is warranted.

Imaging Supplies Express (ISE) (SR AS 12-725352) operated as a retailer and repairer of printer and typewriter parts. At the time that it ceased business operations on October 31, 2002, ISE had unpaid liabilities for a late-payment penalty for the second quarter 2002 (2Q02), and for a determination for the period July 1, 2002, through October 31, 2002, for which ISE had not filed returns. Since petitioner was the sole corporate office and shareholder of ISE and the four conditions

1 for imposing personal liability under Revenue and Taxation Code Section 6829 had been met, the
2 Sales and Use Tax Department (Department) issued a determination to petitioner for the liabilities
3 originally assessed against ISE. Petitioner does not dispute that he is personally liable, but does
4 dispute the amount of the liability.

5 To establish the estimated amount of taxable sales of \$ 214,020 for the period July 1, 2002,
6 through October 31, 2002, the Department used an average amount of daily taxable sales, computed
7 using reported amounts for the period July 1, 2001, through June 30, 2002. Petitioner contends that the
8 Department's estimate is overstated because the corporation's sales volume was lower in the last few
9 months of operation. In March 2009, petitioner filed returns for 3Q02 and October 2002, which
10 showed taxable sales of \$30,848 and \$37,713, respectively, a total of \$68,561, and he subsequently
11 argued that the unreported taxable sales should be even less, an estimated amount of \$57,265.11. In
12 support, petitioner provided copies of ISE's bank statements for the last two quarters of 2002 and a
13 copy of the front page of ISE's federal income tax return for 2002.

14 ISE's bank statements for the last two quarters of 2002 reflect deposits of \$447,622. Petitioner
15 has not explained how the bank deposits provide evidence to support either of the significantly lower
16 figures he has provided. With respect to the federal return, petitioner used the cost of goods sold
17 reported on that return and an estimated markup of 15 to 20 percent to compute an estimated amount of
18 taxable sales. Petitioner has provided no supporting documentation, and his method of estimating
19 taxable sales, particularly the estimated markup of 15 to 20 percent, has no basis (the book markup
20 based on the amounts reported on the federal return is about 192 percent). We find that the available
21 evidence does not support an adjustment to the amount of unreported taxable sales.

22 **Issue 2:** Whether relief of the late payment, failure-to-file, and finality penalties is warranted.
23 We find that relief is not warranted.

24 The penalties at issue here were automatically applied because ISE did not timely pay its return
25 for 2Q02, did not file returns for 3Q02 or October 2002, and did not timely pay the determination
26 issued for the period July 1, 2002, through October 31, 2002. Petitioner has filed requests for relief of
27 the penalties on the grounds that he believed all of ISE's tax obligations had been properly reported
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1 and paid. He also states that he neglected to pay attention to ISE's financial obligations because he
2 was distracted as a result of a fire at his residence in 2003.

3 As ISE's sole corporate officer and shareholder, we find that he must have known that the taxes
4 at issue were due and had not been paid. Further, even if petitioner were personally focused on other
5 matters, he should have ensured that the business was properly reporting its taxable sales. Petitioner
6 has offered no plausible explanation for ISE's failure to timely file returns and make payments, and we
7 find that its failure was not due to reasonable cause. We conclude that relief of the penalties is not
8 warranted.

9 **RESOLVED ISSUE**

10 Since ISE did not participate in the amnesty program, amnesty interest penalties totaling
11 \$1,649.26 were added to the determination for the period July 1, 2002, through October 31, 2002, and
12 petitioner filed a request for relief of those penalties. Since the amnesty program did not commence
13 until February 1, 2005, long after ISE had ceased business operations, we find that ISE's failure to
14 participate in the program was due to reasonable cause and circumstances beyond its control.
15 Accordingly, we recommend relief of the amnesty interest penalties if, within 30 days of Notice of
16 Redetermination, petitioner either pays the tax and interest in full or enters into an installment payment
17 agreement to do so within 13 months, and successfully completes that agreement.

18 **OTHER DEVELOPMENTS**

19 None.

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