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:	
MACRADIJ SARKIS YACOUBIAN, dba Sunrise Auto Sales	Account Number SR X AC 100-569390 Case ID 508838
Petitioner	Studio City, Los Angeles County

Type of Business: Used car dealer

Audit period: 05/01/05 – 03/31/08

Item	Disputed Amount
Unreported taxable sales	$1,084,252[1]
Negligence penalty	$ 8,945

Tax as determined and protested	$ 89,450.83
Interest through 10/31/12	35,477.80
Negligence penalty	8,945.09
Total tax, interest, and penalty	$133,873.72
Payments	- 54,000.00
Balance Due	$ 79,873.72
Monthly interest beginning 11/01/12	$ 177.25

This matter was scheduled for Board hearing in July 2012, but was postponed at petitioner's request to allow additional time to prepare for the hearing.

UNRESOLVED ISSUES

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

Petitioner operates a used car dealership with multiple locations. For audit, he provided federal income tax returns, income statements, dealer jackets, Report of Sale (ROS) forms, purchase invoices, and bank statements. To establish audited taxable sales, the Sales and Use Tax Department (Department) compiled taxable sales from the sales contracts found in the dealer jackets, excluding any

[1] Petitioner protests a portion of the unreported taxable sales, but has not indicated the amount with which he concurs. Accordingly, we show the entire amount as disputed.

verified nontaxable sales for resale or exempt sales in interstate commerce. It compared audited and reported taxable sales to establish the unreported taxable sales of $1,084,252.

Petitioner acknowledges that reported taxable sales are understated, asserting that his former accountant erroneously failed to report sales that occurred near the end of each month that were not funded by the customer's lending company until the following month. Petitioner states he cannot quantify the amount underreported because his records were not computerized. However, petitioner contends that the audited amount of unreported taxable sales is excessive because an adjustment should be made for bad debts. Petitioner claims that 20 to 25 vehicles were repossessed during the audit period, but he has not provided any documentation.

The Department has used sales contracts in petitioner's deal jackets to establish audited taxable sales. We note that this audit approach is conservative, since the Department found that petitioner was unable to account for 62 ROS forms in 2007 alone that were not associated with sales recorded in the deal jackets. Although the Department routinely regards missing ROS forms as evidence of unrecorded sales, it did not do so in this audit. Petitioner has not provided documentation of bad debts, or even identified any specific vehicles that were repossessed. Further, petitioner did not take a deduction for losses related to bad debts on the available federal tax returns. In summary, the amount of audited taxable sales is based solely on petitioner's source documents (the sales contracts included in the available dealer jackets), and petitioner has not provided evidence of errors in those records or of losses related to bad debts. Thus, we find no adjustment is warranted.

Issue 2: Whether petitioner was negligent. We find that he was.

The Department imposed the negligence penalty because the understatement was substantial and represented a difference between recorded and reported taxable sales. Petitioner disputes the penalty on the basis that he provided all requested records to the Department. Also, petitioner alleges that a portion of the understatement is due to a misunderstanding because his former accountant erroneously failed to report sales that occurred near the end of each month but had not yet been funded by the customer's lending company.

The entire amount of unreported taxable sales represents a difference between recorded and reported taxable sales. Further, the understatement of $1,084,252 is substantial, and represents about

20 percent of reported taxable sales of $5,313,739. We find that any business person, even one with limited experience, should have recognized that all recorded taxable sales must be reported. Further, we reject petitioner's assertion that the understatement was not the result of negligence because it involved an accountant's errors. Petitioner was responsible for ensuring that the reported amounts were correct, and he has provided no non-negligent explanation for his failure to do so. Accordingly, we find that petitioner's failure to report over $1 million of his recorded taxable sales is clear evidence of negligence, and that the penalty was properly applied, even though petitioner had not been audited previously.

OTHER MATTERS

None.

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