

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination)
 Under the Sales and Use Tax Law of:)
)
 A REALTY PUBLICATIONS, INC.,)
 dba First Tuesday)
)
 Petitioner)

Account Number: SR EH 23-697437
 Case ID's 343231, 373181, 379332, 391653
 Riverside, Riverside County

Type of Business: Correspondence school
 Audit Periods: 7/1/01 – 12/31/04 (case ID 343231)
 1/1/05 – 3/31/06 (case ID 373181)
 4/1/06 – 6/30/06 (case ID 379332)
 7/1/06 – 9/30/06 (case ID 391653)

<u>Item</u>		<u>Disputed Amount</u>
Negligence penalties	7/1/01 – 12/31/04	\$11,571 (case ID 343231)
	1/1/05 – 3/31/06	\$ 5,482 (case ID 373181)
	4/1/06 – 6/30/06	\$ 1,430 (case ID 379332)
	7/1/06 – 9/30/06	\$ 1,354 (case ID 391653)

Amnesty double-negligence penalty \$5,321 (case ID 343231)
 Amnesty interest penalty \$6,071 (case ID 343231)

	<u>343231</u>		<u>373181</u>	
	<u>Tax</u>	<u>Penalties</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$290,165.09	\$40,053.91	\$223,324.00	
Adjustment: Department				\$22,332.40
Appeals Division	-174,458.62	-23,162.70	-168,499.00	-16,849.90
Proposed redetermination	\$115,706.47	\$16,891.21	\$ 54,825.00	\$ 5,482.50
Concurred in	-115,706.47		- 54,825.00	
Protested	<u>\$ 0.00</u>	<u>\$16,891.21</u>	<u>\$ 0.00</u>	<u>\$ 5,482.50</u>
Proposed tax redetermination	\$115,706.47		\$ 54,825.00	
Interest (tax paid in full)	42,221.32		7,399.21	
Negligence penalty	11,570.65		5,482.50	
Double amnesty negligence penalty	5,320.56			
Amnesty interest penalty	<u>6,071.47</u>			
Total tax, interest, and penalties	\$180,890.47		\$ 67,706.71	
Payments	-180,890.47		- 67,706.71	
Balance due	<u>\$0.00</u>		<u>\$0.00</u>	

	<u>379332</u>		<u>391653</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$43,764.00		\$42,830.00	
Adjustment: Department Appeals Division	-29,461.00	\$4,376.40	-29,285.00	\$4,283.00
Proposed redetermination	<u>\$14,303.00</u>	<u>\$1,430.30</u>	<u>\$13,545.00</u>	<u>\$1,354.50</u>
Concurred in	<u>-14,303.00</u>		<u>-13,545.00</u>	
Protested	<u>\$ 0.00</u>	<u>\$1,430.30</u>	<u>\$ 0.00</u>	<u>\$1,354.50</u>
Proposed tax redetermination	\$14,303.00		\$13,545.00	
Interest through various dates	1,206.39		1,832.64	
Penalty	<u>1,430.30</u>		<u>1,354.50</u>	
Total tax, interest, and penalty	\$16,939.69		\$16,732.14	
Payments	<u>-16,939.69</u>		<u>-16,732.14</u>	
Balance due	<u>\$0.00</u>		<u>\$0.00</u>	

These matters were heard by the Board on April 29, 2009, but the Controller's office did not participate because of a disqualifying contribution, and the remaining Members were unable to reach a decision. The matter was returned for decision on November 17, 2009, but was put over at the request of Board Member Horton to allow time to review the hearing transcript.

In our Decision and Recommendation, we recommended a reaudit to examine certain items which petitioner claimed would reduce its liabilities. In that reaudit, the Sales and Use Tax Department (Department) found that adjustments were warranted, as reflected in the table above. Petitioner no longer protests the remaining additional tax assessment, but still protests the penalties.

UNRESOLVED ISSUE

Issue: Whether petitioner was negligent. We conclude that petitioner was.

The Department imposed the negligence penalties because the errors found in the audit were the same types of errors found in the prior audit. In the prior audit, an understatement of tax was established because petitioner had failed to report tax on its sale of correspondence courses billed on a lump-sum basis. In the audit at issue here, the Department found that, although petitioner was specifically notified in the prior audit that its sale of real estate courses is subject to tax, it continued to report in the same erroneous manner.

Petitioner argues that it prepared its sales and use tax returns in a manner consistent with its accountant's advice and therefore acted reasonably by relying on advice from a qualified professional. In addition, petitioner contends that there was no "resolution" to the prior audit until 2004, when

1 professional, no penalties should be imposed. Petitioner did not, however, provide any reason why it
2 did not comply with the requirements of the amnesty program.

3 Petitioner did not explain why, after it had filed a timely application for amnesty, it failed to
4 take further steps to avoid the amnesty penalties by filing the required amended sales and use tax
5 returns, or by May 31, 2005, paying the amnesty-eligible tax and interest due or entering into an
6 installment payment plan to do so. Petitioner's explanation that it relied on its accountant's advice
7 when it initially filed its returns or that it believed that the proposed assessment was incorrect on that
8 basis does not provide justification for its failure to comply with the provisions of the amnesty
9 program.

10 The amnesty program was intended to encourage people to pay tax liabilities, even while
11 pursuing an appeal of the determination. We find that petitioner's failure to comply with the amnesty
12 program was not due to reasonable cause and circumstances beyond petitioner's control and that there
13 is no basis for relief of the amnesty penalties.

14 **OTHER DEVELOPMENTS**

15 None.

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