

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 BAR CODES UNLIMITED, INC. ) Account Number SR FH 101-135187  
 6 Petitioner ) Case ID 523577  
 7 ) San Marcos, San Diego County

8 Type of Business: Printer

9 Audit period: 01/01/06 – 12/31/07

10 Item Disputed Amount11 Special printing aids sold at retail and purchases  
of consumed supplies subject to use tax \$392,129

12 Tax as determined and proposed to be redetermined \$31,575.35

13 Less concurred - 431.03

14 Balance, protested \$31,144.32

15 Proposed tax redetermination \$31,575.35

16 Interest through 06/30/13 14,402.47

17 Total tax and interest \$45,977.82

18 Payments - 217.00

19 Balance Due \$45,760.8220 Monthly interest beginning 07/01/13 \$ 156.79

21 Petitioner responded to the Notice of Appeals Conference stating that it waived its appearance  
 22 at the appeals conference and requesting that the Appeals Division render a decision based on the  
 23 information and contentions previously submitted. This matter was scheduled for Board hearing in  
 24 February 2013, but petitioner did not respond to the Notice of Hearing. Thus, the matter is scheduled  
 25 for decision on the Consent calendar. At the request of Member Yee's office, the matter was removed  
 26 from the Consent calendar and has been rescheduled for decision on the Adjudicatory calendar.

27 **UNRESOLVED ISSUE**

28 **Issue:** Whether adjustments are warranted to the measure of special printing aids sold at retail  
 and purchases subject to use tax. We find no adjustment is warranted.

1           Petitioner was a commercial printer from January 2005 through February 2010. It provided  
2 records for audit that were substantially complete.

3           The Sales and Use Tax Department (Department) examined petitioner's claimed nontaxable  
4 sales for resale on an actual basis. In that review, the Department found that petitioner had issued  
5 resale certificates to California vendors with respect to purchases of lithographic plates and had not  
6 paid tax reimbursement or tax with respect to those purchases. The Department concluded that  
7 petitioner had purchased the special printing aids for resale, but that it had made retail sales of the  
8 printing aids to its customers, measured by the cost of the printing aids to petitioner. The Department  
9 used petitioner's vendor records to establish the total of those ex-tax purchases of special printing aids  
10 on an actual basis. During its examination of petitioner's ex-tax purchases, the Department also found  
11 that petitioner had made ex-tax purchases from a California vendor of machine dies that petitioner used  
12 to cut paper rolls to the proper width for labels. The Department combined both of these  
13 understatements of reported taxable measure (unreported retail sales of special printing aids and  
14 unreported ex-tax purchases of machine dies subject to use tax) into one audit item, with a total  
15 measure of \$392,129.

16           Petitioner contends that the special printing aids were resold with the printed materials, and the  
17 eventual taxed retail selling price of the printed materials by petitioner's customers included the cost of  
18 the special printing aids, and thus no further tax is due. Petitioner has not raised a specific argument  
19 related to the unreported ex-tax purchases of machine dies subject to use tax.

20           With respect to the special printing aids, it is undisputed that petitioner purchased special  
21 printing aids without payment of tax by issuing resale certificates to its vendors. Petitioner then sold  
22 the printed material produced using the special printing aids to its customers and did not include a  
23 statement retaining title to the special printing aids on its invoices. Thus, it is irrebuttably presumed  
24 that petitioner resold the special printing aids to its customers along with the printed material.  
25 Accordingly, we find petitioner properly issued the resale certificates to its vendors. Therefore, the  
26 transaction subject to tax, if any, is petitioner's sale of the special printing aids to its customers. In that  
27 regard, petitioner contends that the special printing aids were resold by its customers. However, the  
28 Department found that the resale certificates issued by petitioner's customers did not indicate that the

1 special printing aids were purchased for resale, and petitioner did not separately state the sale price of  
2 the special printing aids on its sales contracts. Petitioner has not offered any evidence to the contrary.  
3 Thus, the sales of special printing aids are considered sales at retail, and petitioner owes tax on the  
4 transactions. (Cal. Code Regs., tit. 18, § 1541, subd. (c)(2)(B).) Further, we have reviewed the audit  
5 workpapers and find the Department has established the correct measure of tax for these transactions,  
6 and no adjustment is warranted.

7 With respect to the purchases of machine dies, petitioner issued timely valid resale certificates  
8 to its vendors when purchasing the machine dies. Thus, the seller was relieved from its liability to  
9 remit sales tax on those sales. (Rev. & Tax. Code, §§ 6091, 6092.) However, petitioner used the  
10 machine dies to cut the width of the paper used to print its labels and phone cards. We thus find that  
11 petitioner made a taxable use of the dies and is liable for use tax. Petitioner has not offered any  
12 argument specifically related to this issue or offered evidence that the amount is incorrect. Therefore,  
13 we find no adjustment is warranted.

14 **OTHER MATTERS**

15 None.

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