

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 THOMAS EUGENE BROSI,) Account Number: SR KHO 101-080351
 6 dba Tommy Rock Landscaping & Nursery) Case ID 451594
 7 Petitioner) Clovis, Fresno County

8 Type of Business: Landscaping and nursery

9 Audit Period: 4/1/00 – 9/30/03

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported sales	\$814,412
12 Failure-to-file penalty	\$6,658
13 Amnesty double-failure-to-file penalty	\$4,471
14 Amnesty interest penalty	\$6,679
15 Proposed tax redetermination	\$66,578.26
16 Interest to 7/31/11	53,239.51
17 Penalty for failure to file returns	6,657.93
18 Amnesty double failure to file penalty	4,471.35
19 Amnesty interest penalty	<u>6,679.40</u>
20 Total tax, interest, and penalties	<u>\$137,626.45</u>
21 Monthly interest beginning 8/1/11	<u>\$332.89</u>

22 This matter was scheduled for Board hearing on April 27, 2011, but petitioner did not respond
 23 to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioner that this
 24 matter would be presented to the Board for decision without oral hearing. The matter was then pulled
 25 from the April consent calendar by Board Member Runner.

26 UNRESOLVED ISSUES

27 **Issue 1:** Whether adjustments are warranted to the measure of unreported taxable sales. We
 28 recommend no adjustments.

Petitioner, a sole proprietor, operated a landscaping business and retail nursery without a
 seller's permit; he did not file sales and use tax returns during the audit period. Petitioner incorporated

1 his business on October 1, 2003, and obtained a seller's permit on May 18, 2007. The business was
2 closed out on December 31, 2008.

3 During the audit, petitioner provided copies of nursery sales invoices for February 2002
4 through September 2003, which the Sales and Use Tax Department (Department) noted included sales
5 tax reimbursement, and provided bank statements for January 2000 through December 2001 including
6 deposits for both the nursery and the landscaping business. Petitioner did not provide any invoices for
7 his landscaping business or sales journals, federal income tax returns, or bank statements for 2002 and
8 2003. To establish taxable sales, the Department compiled the invoices by days and calculated an
9 average amount of sales revenue per day. Using the average daily sales amount and the estimated
10 number of days petitioner was open for business, the Department established audited taxable sales of
11 \$198,889.59 for the period January 1, 2002, through December 31, 2002, and \$267,468.87 for the
12 period January 1, 2003, through September 30, 2003. Since no invoices were available for the period
13 April 1, 2000, through December 31, 2001, the Department established audited quarterly sales of
14 \$49,722 based on the average quarterly sales for 2002 ($\$198,889 \div 4 = \$49,722$) and computed taxable
15 sales for those seven quarters of \$348,054. In sum, the Department established that petitioner did not
16 report taxable sales of \$814,412.46 for the audit period.

17 Petitioner argues that the audited unreported taxable sales were excessive because there was no
18 allowance for tax-paid purchases resold, but he has provided no documentation in support of that
19 argument. We find that the Department used the best available evidence to establish the liability at
20 issue, and that petitioner has provided no basis for adjustment.

21 Petitioner also asserts that the liability should be reduced to zero because the corporation has
22 been dissolved and no assets remain. Although the Department contends the corporation is still in
23 operation, we find that petitioner's argument and the Department's response are both irrelevant. Not
24 only does the liability at issue here relate to the business as a sole proprietorship, but also the financial
25 state of a business is irrelevant to whether it incurred a sales tax liability during its prior period of
26 operation (even if it is very relevant to payment of the liability so incurred).

27 **Issue 2:** Whether relief of the failure-to-file penalty, the amnesty double failure-to-file penalty,
28 or amnesty interest penalty is warranted. We recommend no relief.

1 A 10 percent penalty was added to the established liability because petitioner failed to file
2 returns for the audit period. Since petitioner did not participate in the amnesty program, an amnesty
3 double failure-to-file penalty of \$4,471.35 was added to the determination for the amnesty-eligible
4 quarters, and an amnesty interest penalty of \$6,679.40 will be imposed when the liability becomes
5 final. By letter dated November 15, 2010, we provided petitioner with a copy of form that could be
6 used to request relief from these penalties, but no request for relief has been submitted. Thus, we have
7 no basis upon which to consider recommending relief of these penalties.

8 **OTHER DEVELOPMENTS**

9 None.

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