

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:)
CHERIE ROSE, INCORPORATED) Account Number: SR GH 99-805494
Case ID 466880
Petitioner) Los Gatos, Santa Clara County

Type of Business: Interior design and home furnishings

Audit period: 7/1/03 – 6/30/06

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$235,061		
As determined:		\$131,737.33	\$13,173.78
Post-D&R adjustment		- 39,547.20	- 3,954.79
Post Board hearing adjustment		<u>- 72,797.53</u>	<u>-9,218.99</u>
Proposed redetermination, protested		<u>\$19,392.60</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$19,392.60	
Interest through 05/31/12		<u>12,100.71</u>	
Total tax and interest		\$31,493.31	
Payments		<u>- 90.00</u>	
Balance Due		<u>\$31,403.31</u>	
Monthly interest beginning 06/01/12		<u>\$ 112.60</u>	

The Board held a hearing regarding this matter on September 21, 2011, and directed the Sales and Use Tax Department (Department) to review additional documentation provided by petitioner. Based on the Department’s analysis, we recommend a significant reduction of the amount of unreported taxable sales and recommend that the penalty be deleted, as discussed below under Post Hearing Developments.

UNRESOLVED ISSUE

Issue: Whether reductions are warranted to unreported taxable sales. We find no further adjustment is warranted.

Petitioner operates an interior design and home furnishings business. In the audit, the Department established audited taxable sales on a markup basis and computed an understatement of

1 reported taxable sales of \$1,596,815. At the appeals conference, petitioner asserted that its
2 computerized sales journal provided for audit contained input errors, and it subsequently provided a
3 reconstructed sales journal. The Department traced February 2005 sales invoices to the February 2005
4 reconstructed sales journal and found seven invoices for retail sales that were not recorded. The
5 Department computed a percentage of understatement of the recorded figures of 26.10 percent, which
6 it applied to the taxable sales recorded in the reconstructed sales journal to establish audited taxable
7 sales for 2005. Comparing audited and reported taxable sales for 2005, the Department computed a
8 percentage of understatement of 33.40 percent, which it applied to reported taxable sales for the audit
9 period to compute understated taxable sales of \$1,117,455.

10 Before the Board hearing, petitioner claimed that four of the seven invoices that were omitted
11 from the reconstructed sales journal for February 2005 were prepared to record partial payments and
12 that the sales represented by those invoices were recorded in its sales journals after February 2005,
13 when full payment was received from the clients. Petitioner had no explanation of why the other three
14 invoices were not recorded in its reconstructed sales journal. We found that the evidence was
15 insufficient to support petitioner's assertion or to warrant further adjustment.

16 POST-HEARING DEVELOPMENTS

17 At the Board hearing, petitioner provided a significant amount of additional documentation,
18 which consisted primarily of sales invoices, purchase invoices, and sales analysis reports. The
19 documentation was sufficient to expand the test period to include sales for four quarters. The
20 Department prepared a reaudit projecting the results of the expanded test to compute an understatement
21 of \$235,061, a reduction of \$882,394 from the amount of \$1,117,455 established in the post-D&R
22 reaudit. Also, since the revised understatement represents a percentage of error of only 7 percent
23 ($\$235,061 \div \$3,345,832$), the Department concludes that the understatement was not the result of
24 negligence. We concur and thus recommend that the understatement be reduced to \$235,061 and the
25 penalty deleted.

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