

1 the amounts petitioner charged its customers for delivery routinely exceeded the amounts the common
2 carriers charged petitioner for making the deliveries, and determined that petitioner's charges to its
3 customers in excess of the amounts petitioner paid to common carriers represented gross receipts
4 subject to tax. The Department compared delivery charges by four of petitioner's major carriers for
5 the year 2007 with the amounts petitioner charged its customers to compute percentages of error in
6 claimed nontaxable delivery charges (block test), and used the computed percentages of error to
7 establish disallowed claimed nontaxable delivery charges of \$1,538,566. Prior to the Board hearing,
8 petitioner conceded that the Department had properly disallowed that portion of its claimed nontaxable
9 delivery charges, but argued that it could not afford to pay the amount of tax due. Since there is no
10 provision in the law for relief from a tax liability on the grounds that a retailer cannot afford to pay the
11 tax, we concluded that no adjustment was warranted. However, at the Board hearing, petitioner
12 contended that the block test performed in the audit did not adequately represent its operations, and
13 also contended that its "redeliveries" and "self-deliveries" should be taken into account.

14 **POST HEARING DEVELOPMENTS**

15 Petitioner provided additional information to expand the block test, and also provided
16 documents showing that, when goods were delivered and then redelivered to a customer by a common
17 carrier, the sum of the charges by the common carrier for the original delivery and the redelivery
18 exceeded petitioner's delivery charge to its customer. Based on this additional information, the
19 Department performed a reaudit to expand the block test to include delivery charges in 2006, and to
20 make adjustments for delivery charges on nontaxable sales and delivery charges that were less than the
21 amounts charged by common carriers due to redeliveries. These adjustments resulted in a reduction to
22 the amount of disallowed claimed nontaxable delivery charges from \$1,538,566 to \$1,080,160. While
23 petitioner contends that an additional adjustment is warranted for its costs of making redeliveries using
24 its own trucks at no charge to its customers, petitioner did not provide any documentation to support
25 this contention, and we find that no adjustment is warranted. We have reviewed the reaudit
26 workpapers and we concur with the Department's recommendations to reduce the amount of
27 disallowed claimed nontaxable delivery charges to \$1,080,160.

28 Summary prepared by Lisa Burke, Business Taxes Specialist III