

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION PETITION FOR REHEARING SUMMARY**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
GATEWAY AUTO CENTER, INC. ) Account Number SR AS 100-050915  
Petitioner ) Case ID 437262  
Rolling Hills Estates, Los Angeles County

Type of Business: Used car dealership  
Audit period: 01/01/03 – 09/30/05

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported sales	\$798,633		
Negligence penalty	\$ 6,468		
As determined		\$129,122.99	\$12,912.29
Pre-D&R adjustment		+ 4,455.00	+ 445.50
Post-D&R adjustment		- 68,901.26	- 6,890.13
Proposed redetermination, protested		<u>\$ 64,676.73</u>	<u>\$ 6,467.66</u>
Proposed tax redetermination		\$ 64,676.73	
Interest through 03/31/13		23,979.33	
Negligence penalty		<u>6,467.66</u>	
Total tax, interest, and penalty		\$ 95,123.72	
Payments		- 48,584.36	
Balance Due		<u>\$ 46,539.36</u>	
Monthly interest beginning 04/01/13		<u>\$ 80.46</u>	

The Board heard this matter on July 26, 2012, and ordered a reduction of interest of \$11,985.48. The Board ordered no further adjustments to the amounts of unreported sales or the negligence penalty. Petitioner filed a timely petition for rehearing. The petition for rehearing was scheduled for consideration on the Board’s Consent calendar for December 2012 but was moved to the March Adjudicatory calendar at the request of Board Member Steel.

**UNRESOLVED ISSUE**

**Issue:** Whether the petition for rehearing should be granted. We recommend that it be denied.

At the Board hearing, petitioner’s argument and the discussion among the Board Members focused on the amount of unreported sales. Neither petitioner nor the Department specifically

1 addressed the negligence penalty in the presentations to the Board. Petitioner filed a petition for  
2 rehearing on August 29, 2012, stating only that it believes the Board did not consider all issues. We  
3 requested clarification regarding petitioner's arguments, and it replied in a letter dated October 15,  
4 2012. In that letter, petitioner states that all of its arguments regarding the understatement of reported  
5 taxable measure have been ignored. That statement is patently incorrect, since the arguments were  
6 thoroughly discussed and considered by the Members. That the Board did not agree with petitioner's  
7 arguments certainly does not mean that the Board ignored the arguments.

8 In its October 15, 2012 letter, petitioner states that it is now requesting only the deletion of the  
9 penalty, on the basis that it does not believe there was any wrong doing. Although the issue of the  
10 negligence penalty was not directly addressed during the hearing, it is addressed in the Board Hearing  
11 Summary and in the D&R. In those documents, we note that petitioner provided no summary record  
12 of sales or sales and use tax returns worksheets and that petitioner informed the Department that  
13 reported amounts were estimates. Also, as discussed at the Board hearing, there is some evidence that  
14 the sales prices petitioner recorded in the records of individual sales were understated (three of the five  
15 customers who responded to the Department's inquiries indicated selling prices higher than those  
16 recorded by petitioner). We find the absence of summary sales records, the unreliability of the records  
17 of individual sales, and the estimation of reported amounts are clear evidence of negligence. Further,  
18 we find that petitioner's unsupported general opinion that there was no wrong doing is insufficient to  
19 warrant further consideration. We conclude the Board correctly decided this matter, and petitioner has  
20 not presented a basis for rehearing. We thus recommend that the petition for rehearing be denied.

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