

## 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 PAUL GLASSON, dba P. M. Enterprises ) Account Number: SR CH 97-526164  
 ) Case ID 482541  
 6 Petitioner ) Dublin, Alameda County

7 Type of Business: Used car dealership

8 Audit period: 10/01/02 – 09/30/05

9 Item Disputed Amount

10 Disallowed claimed nontaxable sales \$312,206  
 11 Unreported sales \$540,900

	<u>Tax</u>	<u>Penalty</u>
12 As determined:	\$89,880.94	\$9,231.16
13 Adjustment - Appeals Division	- 956.16	<u>-9,231.16</u>
14 - Post Board Hearing	<u>- 5,675.62</u>	
14 Proposed redetermination	\$83,249.16	<u>\$ 00.00</u>
15 Less concurred	<u>- 12,320.55</u>	
15 Balance, protested	<u>\$70,928.61</u>	
16 Proposed tax redetermination	\$ 83,249.16	
17 Interest through 12/31/11	<u>53,204.32</u>	
17 Total tax and interest	<u>\$136,453.48</u>	
18 Monthly interest beginning 1/1/12	<u>\$ 485.62</u>	

19 The Board held a hearing regarding this matter on July 26, 2011, granting petitioner 30 days to  
 20 provide documentation to support consignment sales and directing the Sales and Use Tax Department  
 21 (Department) to examine consignment sales separately from other sales. Upon review of the  
 22 documentation provided by petitioner, the Department accepted one transaction for \$23,468 as a  
 23 nontaxable consignment sale, and prepared a reaudit to reduce the audited understatement by that  
 24 amount, from \$1,069,481 to \$1,046,013. Upon further review, the Department noted that it had failed  
 25 to incorporate this adjustment into its calculation of the percentage of error, meaning that the full  
 26 adjustment to account for the accepted consignment sale was not allowed. The Department has now  
 27 prepared another reaudit to incorporate this adjustment, reducing the understatement by an additional  
 28 \$44,764, to \$1,001,249. Except for these adjustments, which are discussed below under Post Hearing

1 Developments, the discussion from the Board Hearing Summary we prepared for this appeal, repeated  
2 below under “Unresolved Issues,” remains applicable.

### 3 UNRESOLVED ISSUES

4 **Issue 1:** Whether adjustments are warranted to the disallowed claimed nontaxable sales. We  
5 recommend no adjustment.

6 Petitioner operates a used car dealership, making retail sales, nontaxable sales for resale, and  
7 exempt sales in interstate commerce. The Department examined petitioner’s claimed deductions for  
8 nontaxable sales for resale (which also included claimed exempt sales in interstate commerce) for the  
9 second quarter 2004 and first quarter 2005. The Department found four sales that had been recorded as  
10 exempt sales in interstate commerce for which petitioner did not provide sufficient supporting  
11 documentation. The Department disallowed those four claimed exempt sales and computed that, for  
12 the two-quarter test period, the claimed nontaxable sales were overstated by 53.34 percent. The  
13 Department applied that percentage to the remainder of the audit period and computed an  
14 overstatement of claimed nontaxable sales of \$312,206.

15 Petitioner contends that each of the disallowed claimed nontaxable sales were actually  
16 nontaxable sales of vehicles delivered to purchasers outside California, for use outside California. In  
17 addition, petitioner contends that he should not be held responsible for the sales tax with respect to the  
18 sales in question because he does not believe he was required to collect sales tax reimbursement from  
19 his customers, and because the purchasers were required to pay tax on their purchases when they  
20 registered the vehicles in their respective states or country.

21 Petitioner has provided forms BOE-447, completed by the purchasers, which indicate that the  
22 vehicles were purchased for use outside California. He has also provided evidence that the vehicles  
23 were registered in other states or another country shortly after the dates of sale. However, petitioner  
24 has not provided sales contracts, and there is no documentation that any of the vehicles were required,  
25 by contract, to be shipped outside this state. Further, petitioner has not provided evidence that any of  
26 the vehicles were actually shipped or delivered to a point outside California. Since petitioner has  
27 failed to establish out-of-state delivery with respect to any of the vehicles, we conclude that the sales  
28 occurred in California, and that they are subject to sales tax. As such, it is irrelevant whether the

1 purchasers were required to pay tax when the vehicles were registered outside California. We note  
2 that, as far as we know, all states give a credit against their use tax for any other state's tax or tax  
3 reimbursement the purchaser properly paid when purchasing the subject property, and it appears likely  
4 that the only reason another state would have imposed its full use tax on the purchaser is that petitioner  
5 did not collect sales tax reimbursement on the sale. However, the sales tax is imposed on petitioner, as  
6 the retailer (Rev. & Tax. Code § 6051), and petitioner owes that sales tax without regard to whether it  
7 collected sales tax reimbursement from its purchaser pursuant to Civil Code section 1656.1.

8 **Issue 2:** Whether adjustments are warranted to the audited unreported sales. We recommend  
9 no adjustment.

10 The Department compared total sales reported on sales and use tax returns to the gross receipts  
11 reported on income tax returns, adjusted for various amounts not included in total sales for sales and  
12 use tax purposes, and computed a difference of \$706,504 for the period January 1, 2003, through  
13 September 30, 2005. Petitioner contends that the amount of taxable sales included in this difference  
14 should be reduced by \$609,132, to \$97,372. The \$609,132 consists of \$234,812, which petitioner  
15 asserts are receipts from 18 sales for which he was not the seller since he merely found purchasers for  
16 the vehicles in exchange for a \$200 to \$400 fee paid by the sellers, and \$374,320, which petitioner  
17 asserts is the total amount of nontaxable sales for resale to Manheim, a wholesale vehicle auction  
18 company.

19 The Department has used the amounts reported on petitioner's income tax returns, after  
20 adjustments for sales tax included, DMV fees, charges for optional warranties, and overdraft deposits  
21 to establish the audited amount of total sales. We note that petitioner has not provided the source  
22 documents, such as a detailed sales journal, to show how he arrived at the amounts of gross income  
23 reported on his income tax returns. With respect to the sales of \$234,812 for which petitioner asserts  
24 he was not the seller, if petitioner really believed he was not the seller and that he was solely receiving  
25 fees from these other sellers, we believe it likely he would not have reported the entire sale price as  
26 part of his gross income and would have instead reported only the actual fee received. Nor has  
27 petitioner provided evidence to substantiate that the \$234,812 he claims were receipts from sales  
28 actually made by other sellers was included in the amounts reported on his income tax returns. Thus, if



1 part from his inadequate record keeping. Since this was petitioner's first audit, the D&R generously  
2 gives petitioner the benefit of doubt and recommends that the negligence penalty be removed, which  
3 means that the amnesty doubled negligence penalty is also removed.

4 Since petitioner did not participate in the amnesty program, an amnesty interest penalty of  
5 \$206.58 will be added when the liability becomes final. Petitioner has submitted a properly completed  
6 request for relief of the amnesty interest penalty. We find that that the audited understatement was  
7 primarily the result of petitioner's misunderstanding of proper recordkeeping requirements. Since the  
8 Department did not contact petitioner regarding the audit in question until several months after the  
9 deadline to apply for amnesty, we accept that petitioner had a good faith belief that he had not  
10 understated his liability for the amnesty period. We therefore recommend that the amnesty interest  
11 penalty be relieved if, within 30 days from the Notice of Redetermination, petitioner pays the amnesty-  
12 eligible taxes and interest in full or enters into a qualifying installment payment agreement to pay the  
13 amnesty-eligible tax and interest within 13 months, and successfully completes that agreement.

#### 14 **POST HEARING DEVELOPMENTS**

15 After the Board hearing, the Department re-examined records petitioner had provided during  
16 the audit, including a QuickBooks journal for 2003 and some documentation regarding one sale in  
17 2005 that petitioner had regarded as a consignment sale. The Department found that the  
18 documentation was sufficient to support one consignment sale for \$23,468 in 2003, and it performed a  
19 reaudit to reduce the understatement by \$23,468. With respect to the sale in 2005, the Department  
20 found that petitioner had used a Report of Sale form issued by DMV to transfer title and register the  
21 vehicle in the purchaser's name. Therefore, the sale was subject to sales tax. (See Rev. & Tax. Code,  
22 § 6275 and Sales and Use Tax Audit Manual, § 0607.30.) Upon further review, the Department  
23 concluded that the percentage of error should be recomputed after the consignment sale for \$23,468  
24 had been removed. It therefore prepared another reaudit which resulted in an additional reduction of  
25 the audited understatement of \$44,764, to \$1,001,249. We agree with the most recent reaudit prepared  
26 by the Department, and recommend a reduction in the audited understatement of reported taxable  
27 measure of \$68,232, from \$1,069,481 to \$1,001,249.

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