

**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: )  
 OCÉ FINANCIAL SERVICES, INC. ) Account Number SC OHA 100-269121  
 Petitioner ) Case ID 473623  
 ) Boca Raton, Florida

Type of Business: Seller and lessor of commercial printers, copiers, and related products  
 Audit period: 01/01/04 – 12/31/06

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$4,703,773 <sup>1</sup>
Relief of interest	\$ 217,195
Tax as determined	\$1,290,319.87
Pre-D&R adjustment	- 562,920.48
Proposed redetermination	\$ 727,399.39
Less concurred	- 347,221.62
Balance, protested	<u>\$ 380,177.77</u>
Proposed tax redetermination	\$ 727,399.39
Interest	<u>217,195.36</u>
Total tax and interest	\$ 944,594.75
Payments	- 944,594.75
Balance Due	<u>\$ 00.00</u>

This matter was scheduled for Board hearing in May 2013, but petitioner did not respond to the Notice of Hearing. Thus, the matter is scheduled for decision on the nonappearance calendar.

This is an appeal that is covered by Revenue and Taxation Code section (Section) 40. Therefore, after the Board has made a determination in this matter, a written opinion that, among other things, sets forth the relevant factual findings and the legal analysis on which that determination is based must be published on the Board's website within 120 days from the date the Board renders a final decision in this matter. Accordingly, the Board may wish to consider the following two options:

<sup>1</sup> Petitioner protests a portion of this understatement of reported taxable measure, but has not specified the amount with which it concurs. Thus, we show the entire amount as disputed.

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2 (1) The Board could follow its usual practice in business tax appeals, in which it typically votes  
3 to resolve the appeal on the day of the hearing. Under the usual practice, a notice of the  
4 Board's determination will be mailed within 45 days of the date of the Board's vote, and the  
5 30-day period for the filing of a Petition for Rehearing (PFR) would begin on the date the  
6 notice is mailed. If a PFR is not filed, the Board's determination will become final and its  
7 decision will be rendered at the expiration of the 30-day PFR period. Unless the Board  
8 specifically directs that it desires to issue a precedential (Memorandum Opinion) decision in  
9 this matter, staff would then expeditiously bring back a proposed (nonprecedential) Summary  
10 Decision that complies with Section 40 for the Board's approval on a later calendar. The  
11 adopted decision will be published timely on the Board's website. If a PFR is filed, no decision  
12 will be rendered until the conclusion of the petition for rehearing process.

13 (2) The Board could inform staff of its tentative determination and direct staff to prepare a  
14 proposed Summary Decision (or Memorandum Opinion) that reflects the tentative  
15 determination for Board approval as soon as practicable. Under this option, the Board would  
16 hold any determination of the appeal in abeyance until it has the opportunity to consider the  
17 proposed decision. The Board's later vote to adopt the decision would also constitute its vote  
18 to resolve the appeal, and within 45 days a notice of decision would be mailed. The 30-day  
19 PFR period would begin running when the notice of the Board's determination was mailed. If  
20 no PFR is filed, the Summary Decision (or Memorandum Opinion) would then be timely  
21 posted on the Board's website pursuant to Section 40.

## 22 **BACKGROUND**

23 The Sales and Use Tax Department (Department) issued a Notice of Determination to  
24 petitioner on November 10, 2008. Petitioner filed a timely petition for redetermination, and provided  
25 additional documentation. The Department prepared a reaudit report dated August 18, 2009, and  
26 petitioner stated it agreed with the findings of the reaudit. In a letter dated October 7, 2009, the  
27 Department explained that it intended to recommend to the Board that the liability be redetermined in  
28 accordance with the August 18, 2009 reaudit, unless petitioner contacted the Department to express  
disagreement. The Department submitted the matter to the Board for approval on the consent calendar  
for April 13, 2010, and the Board voted to redetermine the matter in accordance with the Department's  
recommendation. In response to the Notice of Redetermination, petitioner submitted a petition for  
redetermination, disputing the entire amount of the liability. Petitioner explained that its sales and use  
tax manager was on an indefinite medical leave, and its vice president of finance wanted the  
opportunity to provide new evidence. Therefore, the Department canceled the Notice of  
Redetermination, reopened the case, and placed it into non-final, petitioned status.

1 On June 8, 2010, petitioner filed a claim for refund of overpayments made after the audit period  
2 on the basis that petitioner was erroneously remitting tax on a periodic basis with respect to  
3 transactions the Department had determined were sales at inception during the audit period. The  
4 Department verified petitioner had over-reported taxable measure of \$2,248,662 during the period  
5 April 1, 2007, through June 8, 2010. However, petitioner had claimed self-help deductions on its sales  
6 and use tax returns of \$1,066,204. The Department issued petitioner a refund based on an  
7 overstatement of reported taxable measure of \$1,182,458 (\$2,248,662 - \$1,066,204). During its review  
8 of the claim for refund, the Department also prepared a second reaudit report dated June 14, 2011,  
9 making adjustments supported by additional evidence provided by petitioner.

### 10 UNRESOLVED ISSUES

11 **Issue 1:** Whether adjustments are warranted for erroneously reported lease receipts. We find  
12 no further adjustments are warranted.

13 Petitioner is an out-of-state retailer and lessor of commercial printers, copiers, and related  
14 products, supplied exclusively by a related entity. The related entity maintains sales representatives  
15 who solicit sales and leases of the products at issue from customers in California. The Department  
16 found that some of the transactions petitioner regarded as leases, for which it had reported taxable  
17 measure on a periodic basis (as lease receipts), were in fact sales at inception. Thus, the Department  
18 found that, for those transactions, the full sales price should have been reported for the quarter in  
19 which the sale was made. The Department compiled the total amount of such transactions, adjusted for  
20 the nontaxable sales included therein, and established an understatement of reported taxable sales. The  
21 Department also found that petitioner had erroneously reported the periodic payments by the customers  
22 as lease receipts, and it established a credit difference for those erroneously reported amounts. After  
23 the adjustments in the second reaudit, the net amount of understatement of reported taxable measure  
24 related to these transactions is \$4,703,773 (\$8,555,656 - \$1,603,221 - \$2,248,662, where the reductions  
25 represent the credit item in the second reaudit and the amount over-reported after the audit period,  
26 respectively).

27 Petitioner contends that the audited amount of erroneously reported periodic payments should  
28 be increased. At the appeals conference, petitioner requested time to provide documentation to support

1 further adjustment. Although the deadline for providing that information was extended, petitioner  
2 informed the Appeals Division in July 2012 that it did not have additional evidence to present. In the  
3 absence of evidence that the amount of erroneously-reported periodic payments should be increased,  
4 we find no adjustment is warranted.

5 **Issue 2:** Whether relief of interest is warranted. We find relief is not warranted.

6 Petitioner requests relief of interest on the basis that it remitted tax timely on the periodic  
7 payments it considered to be lease receipts, and it did not know that the transactions in question were  
8 sales at inception.

9 The imposition of interest is mandatory, and relief is warranted only under very narrow  
10 circumstances. The only such circumstance which could conceivably apply in this case is  
11 unreasonable error or delay by an employee of the Board. Petitioner has not claimed that there was  
12 unreasonable error or delay by the Department, and we see no evidence of such error or delay.  
13 Accordingly, we find no basis to recommend relief of interest.

14 **OTHER MATTERS**

15 None.

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