

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 ORACLE CORPORATION) Account Number: SR BHA 99-727541
 6 Petitioner) Case ID 217113
 Belmont, San Mateo County

7 Type of Business: Manufacture and sale of business software

8 Audit period: 01/01/96 – 12/31/98

9 <u>Item</u>	<u>Disputed Amount</u>
10 Disallowed claimed nontaxable sales	\$2,512,392
Purchases subject to use tax (other than Propeller)	\$ 129,365
11 Purchases from Propeller Portable Computer Prod.	\$2,015,281
Negligence penalty	\$ 328,674
12 Relief of interest	Not specified
13 Amnesty interest penalty	\$ 161,490

	<u>Tax</u>	<u>Penalty</u>
14		
15 As determined:	\$4,966,489.61	\$496,649.10
Adjustment - Sales and Use Tax Department	+ 299,948.66	-26,005.11 ¹
16 - Appeals Division	-1,286,029.48	-128,603.02
- Post Board hearing	- 133,673.30	- 13,367.33
17 Proposed redetermination	\$3,846,735.49	\$328,673.64
18 Less concurred	<u>-3,459,146.85</u>	<u>00.00</u>
Balance, protested	<u>\$ 387,588.64</u>	<u>\$328,673.64</u>
19 Proposed tax redetermination	\$3,846,735.49	
20 Interest through 2/28/11	2,704,921.06	
Penalty for negligence	328,673.64	
21 Amnesty interest penalty	<u>161,490.24</u>	
Total tax, interest, and penalty	<u>\$7,042,820.43</u>	
22 Payments	<u>- 3,758,744.37</u>	
23 Balance Due	<u>\$3,283,076.06</u>	

24 Monthly interest beginning 3/1/11 \$ 513.28

25 The Board held a hearing regarding this matter on July 14, 2010, granting petitioners 30 days to
 26 provide additional records and the Sales and Use Tax Department (Department) 30 days to respond.

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 28 ¹ This is the difference between \$56,000 negligence penalty waived in connection with payments under the amnesty program and the \$29,994.89 increase in the negligence penalty in connection with the increase in the tax assessment.

1 The Board asked petitioner to provide additional information and records to support its contentions
2 that: 1) petitioner is not responsible for use tax with respect to its purchases from Propeller Portable
3 Computer Products (Propeller) during the second quarter of 1997 (2Q97) because those transactions
4 were subject to sales tax; (2) even if petitioner does owe tax on these purchases, the measure of
5 deficiency should be adjusted for the amounts Propeller billed as tax; and (3) certain of the disputed
6 sales by petitioner were either nontaxable sales for resale or exempt sales to the United States (US). In
7 addition to evaluating petitioner's contentions and any submissions, the Board directed the Department
8 to: (1) contact Propeller to obtain additional evidence regarding its sales to petitioner during 2Q97;
9 (2) adjust the understatement of reported taxable measure for amounts Propeller billed as tax on its
10 invoices to petitioner; and (3) send XYZ letters to four of petitioner's customers to determine whether
11 certain sales were in fact nontaxable, or if those customers reported and paid any tax on the disputed
12 transactions.

13 The discussion below under "Unresolved Issues" is the same discussion included in the original
14 summary we prepared for this appeal, and remains applicable subject to the post-hearing adjustments
15 recommended by the Department, and the further post-hearing adjustments we recommend, which are
16 discussed under "Post Hearing Developments."

17 UNRESOLVED ISSUES

18 **Issue 1:** Whether further adjustments are warranted to the disallowed claimed nontaxable sales.
19 We recommend no further adjustment.

20 Petitioner is a manufacturer and retailer of business software, and also sells maintenance
21 contracts and training services. The Department used statistical sampling to test the accuracy of
22 petitioner's claimed nontaxable sales, separating the population into three strata: 1) less than
23 \$5,000.00, 2) \$5,000.00 through \$49,999.99, and 3) \$50,000.00 and more. The Department reviewed
24 all claimed nontaxable sales in stratum 3 and reviewed random samples chosen from the other two
25 strata. The Department identified several sales, claimed as nontaxable, for which petitioner did not
26 present sufficient supporting documentation. Of the disallowed claimed nontaxable transactions that
27 remained in dispute at the time of the appeals conference, petitioner and the Department agreed that
28 certain of them were valid nontaxable sales and that one was subject to tax, and in the D&R and

1 SD&R, we recommend that some of the previously disputed transactions be allowed as nontaxable.

2 The remaining disputed transactions are discussed below.

3 Petitioner contends that the disputed sales to CalTech, Raytheon-Range Systems Engineering
4 (Raytheon), Space Systems Loral (Loral), and TransCore, an SAIC Company (TransCore) were
5 nontaxable sales for resale to those businesses, who resold the items in question to the U. S.
6 Government before any use.² To support its claim that the sales to CalTech were nontaxable,
7 petitioner provided: 1) a resale certificate that, under “description of property to be purchased” stated
8 “Refer to purchase order on this and all future purchases”; 2) a purchase order from CalTech for the
9 purchase of a technical services agreement for five years of technical support, not to exceed
10 \$2,000,000; and 3) a fixed price contract between CalTech and petitioner (but it is not entirely clear if
11 the sales at issue were made under that contract). Where, as here, a purchaser issues a “qualified resale
12 certificate” indicating it wants to designate on each purchase order whether the purchase is for resale,
13 each purchase order must then specify whether the property covered by the order is purchased for
14 resale in order for the purchase to be covered by the resale certificate. (Cal. Code Regs., tit. 18, §
15 1668, subd. (b)(4).) Here, despite the qualified resale certificate’s instruction to check the purchase
16 order, the purchase order petitioner submitted for the disputed transaction does not state that the
17 purchase was for resale. Therefore, we find that petitioner did not make the disputed sale pursuant to
18 the resale certificate it proffered.

19 To support its claim that the sale to Raytheon was nontaxable, petitioner provided a “blanket
20 exemption certificate” dated April 13, 1995. However, the seller’s permit number listed on that
21 certificate was closed out six months earlier, on November 15, 1994, so at the time the certificate was
22 issued, and in 1998 when the disputed sale was made, the certificate was not supported by a valid
23 seller’s permit number (there are also other reasons the certificate does not support the disputed sale as
24 nontaxable, as discussed in the D&R). Petitioner also provided a purchase order in support. While
25 that purchase order references a seller’s permit number that was in effect when the purchase order was
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27 ² With respect to the sales to CalTech, petitioner also contended that \$195,000 of the disputed transactions represented
28 nontaxable training fees. During the reaudit we recommended, the Department concluded that the \$195,000 represented
charges for nontaxable services and deleted that amount from the disallowed claimed nontaxable sales.

1 issued, the purchase order does not state that the purchase was made “for resale” and thus does not
2 constitute a resale certificate.

3 To support its claim that the sale to Loral was nontaxable, petitioner provided a resale
4 certificate dated April 15, 1995, indicating that Loral was in the business of selling electronic
5 equipment to the U. S. Government. The certificate states “See Purchase order” under the
6 “Description of Property to be Purchased.” However, despite the instruction in the qualified resale
7 certificate to see the purchase order to determine if that particular purchase is for resale, petitioner did
8 not provide a copy of the applicable purchase order, and instead submitted a “Purchase Order
9 Exception Form” stating that Loral could not provide a purchase order because it “does not issue
10 purchase orders.” In other words, petitioner is unable to provide a purchase order for this transaction
11 including the statement “for resale” or the like. As such, there is no valid resale certificate as to the
12 disputed sale and petitioner has not otherwise established that the sale was for resale. We thus find
13 that tax applies.

14 To support its claim that the sale to TransCore was nontaxable, petitioner submitted a resale
15 certificate from Science Applications International Corporation (SAIC), which states that SAIC is
16 engaged in the business of selling property and services to the U. S. Government, any tangible personal
17 property purchased (except property ordered “For Resale-No”) will be resold, and the description of
18 property to be purchased is “see purchase order.” The purchase order petitioner submitted for this
19 transaction does not include a statement that the property purchased is for resale, and includes an
20 unmarked box next to the statement “This order is exempt from sales/use tax in the state to which the
21 material is to be shipped.” Also, the Department notes that the resale certificate was issued by SAIC,
22 while the sale was made to TransCore. We find that, even if the resale certificate had been issued by
23 the actual purchaser (which it was not), that certificate together with the purchase order do not
24 establish that the sale was a nontaxable sale for resale.

25 We note that, even if petitioner had taken valid resale certificates for these transactions, there
26 would still be the issue of whether they were taken in good faith as to the disputed sales because it is
27 not clear that petitioner’s license agreements even permitted its customers to resell the subject
28 software. We are unable to resolve this issue in favor of petitioner since it has not provided copies of

1 the licensing agreements for the software, but for the reasons explained above, this issue is moot
2 because petitioner has not established that it took valid resale certificates for these sales.

3 **Issue 2:** Whether further adjustments are warranted to the audited amount of purchases subject
4 to use tax. We recommend no further adjustment.

5 Petitioner did not report any use tax liability on its purchases of assets, supplies, and other
6 consumed items. The Department used statistical sampling to examine petitioner's expense, supply,
7 and capital asset accounts, separating the population into four strata, purchases that were: 1) less than
8 \$1,000.00, 2) \$1,000.00 through \$9,999.99, and 3) \$10,000.00 through \$99,999.99 and 4) \$100,000.00
9 and more. The Department examined all purchases in stratum four and reviewed random samples
10 chosen from the other three strata and identified purchases that it concluded were subject to use tax.
11 At the appeals conference, petitioner and the Department agreed on the application of tax for some of
12 the transactions, and the D&R recommends additional adjustments. The remaining disputed
13 transactions are discussed below.

14 Petitioner contends that its purchases from Gilmore Global Logistics Services (Gilmore) were
15 not subject to use tax because none of the materials it purchased from this vendor were shipped to
16 California. The D&R recommends removing purchases through October 31, 1997. For purchases
17 beginning November 1, 1997, we agreed that only a portion of those purchases delivered outside
18 California were for use in California, and we adopted the 2.15 percent ratio the Department established
19 based on its test of purchases from other vendors in relatively similar circumstances combined with a
20 test performed by petitioner. Thus, the D&R recommends that 97.85 percent of the purchases from
21 Gilmore removed from the deficiency and tax apply to 2.15 percent of purchases from Gilmore on and
22 after November 1, 1997. Petitioner has not provided any additional documentation, and we
23 recommend no further adjustment.

24 Petitioner contends that only \$2,715 of the purchase price paid to Noel Allum, Photographer,
25 should be included as taxable measure in the sample because the remainder of the transaction, \$2,050,
26 was a deposit that was paid prior to the sample period. We conclude that the full purchase price for the
27 purchase, \$4,765 (\$2,715 + \$2,050) must be included as taxable for purposes of the test because the
28 purchase invoice was selected as a sample item, the sale of the prints occurred at or about the time that

1 the invoice was issued, and it is the purchase price that is taxable at that time, not the amount of the
2 purchase price that remained due when the sale occurred.³ This recommendation is in accord with the
3 guidelines stated in the Sales and Use Tax Department Audit Manual, section 1302.25, subdivision (d).

4 **Issue 3:** Whether petitioner is liable for use tax with respect to its purchases from Propeller
5 during the second quarter of 1997. We conclude that it is.

6 The audited amount of purchases subject to use tax includes purchases of \$13,045,668 from
7 Propeller during the period January 1, 1996, through March 31, 1997, and purchases of \$3,635,904
8 from Propeller during the second quarter 1997 (2Q97). Petitioner protests the application of use tax
9 only with respect to the purchases made in 2Q97. Propeller had previously operated in California, but
10 it moved out of state in October 1994 and closed out its California seller's permit. At that time, it
11 stopped billing petitioner for sales tax reimbursement. Beginning no later than April 1997, Propeller
12 had representatives in California on petitioner's premises for the purpose of soliciting or processing
13 sales orders. Also, beginning April 1, 1997, Propeller added a line item titled "Sales Tax" to its sales
14 invoices and began charging sales tax reimbursement on its retail sales to petitioner. Propeller
15 obtained a seller's permit from the Board with an initial start date of July 1, 1997. That date was later
16 changed to April 1, 1997, after the Department discovered Propeller had been billing "sales tax" to
17 petitioner and had representatives soliciting sales in California during 2Q97. Although petitioner did
18 pay to Propeller the amounts billed as "sales tax" on invoices during 2Q97, neither petitioner nor
19 Propeller has reported tax on the transactions at issue to the Board. In order to protect the state, the
20 Department has asserted tax for those transactions against both Propeller and petitioner.

21 Petitioner contends that it is not liable for use tax on these transactions because petitioner did
22 not issue a resale certificate to Propeller and the applicable tax is sales tax because: 1) Propeller's sales
23 invoices show "sales tax" as a line item; 2) Propeller's sales invoices are labeled as drop shipments,
24 which implies that the vendor supplying the property is located in California; 3) the requisition and
25 purchase order numbers indicated on Propeller's sales invoices do not correspond to petitioner's

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27 ³ If the deposit had been selected in the sample rather than the actual purchase invoice, we would recommend that no
28 portion of the purchase price be included in the taxable measure because the sample item in that case would represent
merely a deposit, and not a taxable purchase.

1 purchase order numbers, which petitioner regards as an indication that the property sold was drop-
2 shipped to petitioner; and 4) there are indications that none of the equipment petitioner purchased from
3 Propeller was manufactured by Propeller. Further, petitioner asserts that the Department should bear
4 the burden of proving that the transactions in question are use tax transactions. Petitioner also
5 contends that, if use tax were applicable, it should be relieved from liability for that tax because it has
6 valid receipts for payment of tax (Propeller's sales invoices).

7 We conclude that use tax is the applicable tax, and petitioner is liable for that use tax. Even if
8 products sold by Propeller were drop shipped by vendors to petitioner, the available evidence does not
9 show that any such drop shipments originated from locations in California. Accordingly, the evidence
10 does not show that sales tax is applicable. We recognize that Propeller's sales invoices did include a
11 line item for "sales tax," but mere terminology on sales invoices obviously does not determine whether
12 sales tax or use tax applies. Propeller's sales invoices are not valid receipts for payment of use tax
13 because they do not include the number of the Propeller's permit to engage in business as a seller or
14 the retailer's Certificate of Registration - Use Tax. (Cal. Code Regs., tit. 18, § 1686, subd. (a)(2).)
15 Accordingly, petitioner is not relieved from liability for the use tax it owes with respect to these
16 purchases (Rev. & Tax. Code, § 6202), and remains liable for use tax on the purchases in question.
17 However, although petitioner's payments of amounts as "sales tax" to Propeller do not relieve
18 petitioner of liability for tax, we believe those payments justify the Department's attempts to collect
19 the tax due in connection with sales by Propeller to petitioner from Propeller. Accordingly, the D&R
20 recommends that the Department withhold collection action against petitioner until Propeller's appeal
21 is final, and if our recommendation in that appeal is sustained, pursue collection actions against
22 petitioner only to the extent that collection efforts against Propeller are not successful.

23 **Issue 4:** Whether petitioner was negligent. We conclude that it was, and the negligence penalty
24 was properly applied.

25 The Department added a ten percent penalty for negligence because petitioner made no effort to
26 report use tax on purchases of tangible property that it consumed even though previous audits had
27 resulted in use tax assessments, and petitioner's records were incomplete and inconsistent. The
28 Department concluded that petitioner had not made good faith attempts to comply with California sales

1 and use tax reporting requirements. Petitioner protests the negligence penalty on the basis that the use
2 tax liability disclosed by audit is minor in comparison to the amount of tax petitioner reported on
3 returns. Petitioner states that the audited measure subject to use tax is only 4.5 percent of reported
4 taxable measure, including purchases from Propeller, and 3 percent without them (we calculate slightly
5 higher percentages). . Petitioner admits that during the audit period it did not have the ability in its
6 accounting system to properly accrue use tax, but asserts that this occurred because the business was
7 growing rapidly and its personnel and resources were constrained. Further, petitioner states that during
8 1999, after the appealed audit period, it took corrective action by installing systems to accrue use tax.
9 Petitioner also disputes the Department's description of its records as inconsistent and incomplete,
10 stating the liability would be much greater if that were true. Moreover, petitioner asserts that the
11 majority of the audit adjustments are attributable to differences between petitioner's and the
12 Department's legal interpretation of certain transactions, and are not due to a lack of information or
13 missing documents.

14 We note that petitioner was alerted to the requirement to report use tax by at least two previous
15 Board audits and by numerous *Tax Information Bulletins* it received from the Board, but petitioner still
16 reported *no* use tax during the entire audit period on its taxable purchases of fixed assets and other
17 items for consumption. Furthermore, petitioner's records were deficient because several untaxed sales
18 were not adequately documented. Petitioner's failure to accrue and report its use tax liability, its
19 failure to properly document claimed nontaxable sales, and its failure to maintain the records necessary
20 to determine its correct tax liability, resulted in an overall understatement of \$47,840,742, which
21 represents 7.3 percent of reported taxable measure of \$651,295,777. For all these reasons, we
22 conclude that petitioner was negligent and that the penalty was properly applied.

23 **Issue 5:** Whether relief of interest is warranted. We find there is no basis for relief.

24 Petitioner requests relief of the interest that accrued while this appeal was pending. The Notice
25 of Determination in this matter was issued on April 1, 2003. Subsequently, petitioner filed a timely
26 petition for redetermination, and the first appeals conference was held on February 18, 2004.
27 Petitioner asserts the Board should grant relief due to its own avoidable delays and asserts the delays in
28 the case have been caused by the substitution of two appeals attorneys, the need for at least three

1 separate appeals conferences due to personnel turnover in the Board's Appeals Division, and the fact
2 that none of the foregoing is attributable to petitioner's acts. Petitioner first contends that relief can be
3 granted under Revenue and Taxation Code section 6593.5. Alternatively, petitioner contends that,
4 even if section 6593.5 does not apply, relief of interest should be allowed under the general principles
5 of equitable estoppel. Further, petitioner contends that relief of interest which accrued after the first
6 appeals conference is warranted under Revenue and Taxation Code section 6596.

7 Section 6593.5 allows the Board to grant relief of interest if specified conditions are satisfied,
8 but *only* as to interest accrued on tax liabilities arising during taxable periods commencing on and after
9 July 1, 1999. Petitioner asserts there is a latent ambiguity in section 6593.5, and the section should be
10 interpreted as enabling the Board to grant relief from interest accruing on and after July 1, 1999, as to
11 liabilities arising in any period. Petitioner is mistaken: section 6593.5 is very clear on this point. Since
12 the entire audit period is prior to July 1, 1999, the Board has no authority to grant relief of interest
13 pursuant to section 6593.5. Further, even if we did have discretion to consider relief of interest in this
14 case, we find that significant aspects of the delays at the appeals level are attributable to acts of, or
15 failures to act by, petitioner.⁴ Many of the delays are attributable to the lengthy periods of time it took
16 for petitioner's staff to recover records and other evidence. Also, petitioner requested several delays,
17 and, on at least two occasions, the Appeals Division offered to issue a D&R based on a review of the
18 petition file, but instead petitioner requested additional conferences. Furthermore, this is a complex
19 case which required substantial, time-consuming efforts by all involved parties. Even if relief of
20 interest under section 6593.5 were available in this matter, we would recommend no such relief because
21 the parties were working on this case during the entire time that it was under the Appeals Division's
22 jurisdiction, without substantial unreasonable delays under the circumstances.

23 With respect to petitioner's contention that relief from the interest should be allowed under the
24 general principles of equitable estoppel, we find that equitable estoppel is simply not applicable under
25 these circumstances. For example, one requirement is that the person seeking relief under equitable
26 estoppel must be ignorant of the facts. Petitioner was certainly not ignorant of the facts relevant to its
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28 ⁴ A chronology of the events that occurred during the course of this appeal is attached as exhibit 4 of the D&R.

1 the remaining 60 percent were shipped to petitioner from outside this state. Based on this information,
2 the Department concluded that sales tax applies to the 40 percent of Propeller's sales to petitioner in
3 2Q97 that were drop shipped from California, and recommends a 40 percent reduction in the measure
4 of use tax for purchases from Propeller in 2Q97, reducing the measure for these purchases by
5 \$1,454,362, from \$3,635,904 to \$2,181,542. The Department recommends no further adjustment for
6 tax billed by Propeller and paid by petitioner because petitioner has not established that tax was billed
7 for all the subject transactions and, in any event, the Department's concession of 40 percent adequately
8 accounts for all the tax that might have been billed on Propeller's invoices.

9 For the reasons explained in our analysis and because Propeller's estimate of 40 percent of the
10 sales occurring in California is the best information available, we accept the Department's concession
11 of 40 percent of the purchases from Propeller. For the remaining 60 percent of the purchases,
12 however, the sales occurred outside California, and thus the applicable tax is use tax owed by
13 petitioner. Propeller's sales invoices do not qualify under Revenue and Taxation Code section 6202 as
14 receipts that serve to relieve petitioner of its liability for the use tax due because they do not include a
15 valid seller's permit number or Certificate of Registration – Use Tax held by Propeller. We therefore
16 find that petitioner is liable for use tax on the 60 percent of the 2Q97 Propeller purchases that were
17 shipped into California from outside this state.

18 However, we disagree with the Department's conclusion regarding whether the measure of
19 deficiency for these purchases that it still asserts includes an amount for tax billed by Propeller and
20 paid by petitioner. In addition to the 10 invoices included as examples with the D&R, each of which
21 show a separately itemized charge for tax, the Department's data extract from petitioner's purchase
22 records indicates that all or substantially all of petitioner's purchases from Propeller in 2Q97 included
23 tax billed at 8.25 percent. On that basis, we conclude that Propeller did bill a separately itemized
24 amount for tax on all its sales to petitioner. Thus, as directed by the Board after the hearing in this
25 matter, we recommend that the tax separately billed by Propeller and paid by petitioner be removed
26 from the measure of deficiency, further reducing the measure for these purchases by \$166,261, from
27 \$2,181,542 to \$2,015,281.

1 Disallowed Claimed Nontaxable Sales

2 This issue involves sales to four customers: Cal Tech Jet Propulsion Laboratory (Cal Tech),
3 Raytheon-range Systems Engineering (Raytheon), Space Systems Loral (Loral), and TransCore, an
4 SAIC Company (TransCore). Petitioner has contended throughout the appeals process, and it argued
5 at the Board hearing, that the resale certificates it has provided for these four customers are blanket
6 certificates that cover all of petitioner's sales to these four customers. Petitioner further asserts that,
7 during the audit, the Department applied different standards to the disputed sales to these four
8 customers because they are US contractors. Specifically, petitioner objected to the Department's
9 request for the contracts between these customers and the US, and related information, as evidence that
10 the property had in fact been resold. In addition, petitioner asserted that the Department is attempting
11 to apply interpretations of resale certificates that were not in effect when the disputed sales were made.

12 We note that the applicable rules as provided in Regulation 1668 have not changed, and thus
13 reject petitioner's argument that the Department has applied provisions of Regulation 1668 that were
14 not in effect when the disputed sales were made. We note further that, because the Department found
15 the sales were not encompassed by the resale certificates petitioner had obtained from the customers,
16 the Department concluded that the sales were presumed taxable, and thus requested further information
17 (such as the US contracts) in order to document resales in fact. We find there was no disparate
18 treatment. The question remains whether the resale certificates did actually cover the sales in question,
19 and if not, whether the sales were in fact for resale.

20 For Cal Tech, petitioner provided a resale certificate that is qualified by a statement referring to
21 each individual purchase order to determine whether the specific purchase is for resale. Petitioner has
22 provided a purchase order and a contract between petitioner and Cal Tech indicating that Cal Tech
23 would transfer computer programs to the US. Also, after the hearing the Department issued an XYZ
24 letter to Cal Tech and discussed the matter by telephone with Cal Tech's controller, who indicated that
25 Cal Tech is unable to answer the inquiry because there are no records available for the sales, which
26 were made many years ago. We find that the purchase order petitioner submitted does not appear to
27 relate to any of the disallowed claimed nontaxable sales to Cal Tech. Thus, petitioner does not have an
28 effective resale certificate for the sales to Cal Tech. The contract provided by petitioner appears

1 irrelevant because the sales invoices and other available documentation do not connect it with the
2 disputed sales, and petitioner has neither provided Cal Tech's US contract(s) nor shown by other
3 evidence that the disputed sales to Cal Tech were nontaxable. Thus, petitioner has not established that
4 the sales were in fact for resale, and we recommend no adjustment for the sales to Cal Tech.

5 For Loral, petitioner provided a resale certificate that is qualified by a statement referring to
6 each individual purchase order to determine whether the specific purchase is for resale. Petitioner has
7 not provided a purchase order, but instead provided a "Purchase Order Exception Form" which does
8 not indicate whether the property was purchased for resale. Thus, petitioner has not produced a valid
9 resale certificate covering this sale. After the hearing, the Department issued an XYZ letter to Loral
10 and spoke with a person from Loral about the availability of records, but Loral never responded to the
11 XYZ letter. Thus, we find the evidence does not establish that petitioner's sale to Loral was for resale,
12 and we recommend no adjustment.

13 For Raytheon, the "Blanket Exemption Certificate" provided by petitioner, which is dated
14 April 13, 1995, references seller's permit number SS OH 99-478442. The Department notes that this
15 seller's permit was inactive on the date the resale certificate was issued. The purchase order provided
16 by petitioner references exempt certificate number SS OHB 97-042914, and it does not state that the
17 purchase was for resale. Thus, we find petitioner did not take a valid and timely resale certificate in
18 good faith that covers the subject sale. We note also that the Blanket "Exemption" Certificate
19 provided by petitioner may not be relevant because it references a seller's permit different from the
20 permit noted on the sales invoices and purchase order. Even if the certificate were relevant, several
21 issues undermine its validity. First, it references a seller's permit that was opened and closed effective
22 October 1, 1993, with a stated reason for close-out of "did not operate," and the certificate was issued
23 more than a year after that date, on April 13, 1995. In response to this issue, petitioner asserts that the
24 certificate is valid because Raytheon held other, active permits at the relevant times. We reject
25 petitioner's argument that the certificate also encompasses all of Raytheon's permit numbers, whether
26 included on the certificate or not. In any event, the certificate does not show that the disputed sale was
27 nontaxable because it does not contain either an itemized list of the particular property to be purchased
28 for resale or a general description of the kind of property to be purchased for resale. Moreover, the

1 certificate indicates that the property might be purchased for consumption by Raytheon. In addition,
2 we find that the purchase order, standing alone, is ineffective as a resale certificate because it does not
3 contain the essential elements of a resale certificate. Thus, petitioner has no valid resale certificate
4 covering this sale. After the hearing, the Department sent copies of an XYZ letter to six different
5 addresses it found for Raytheon. Three of the copies were returned as undeliverable, and the
6 Department received no response to the others, nor is there any other evidence of a resale in fact.
7 Thus, we recommend no adjustment for the sale to Raytheon.

8 For TransCore, the resale certificate provided by petitioner was issued by Science Applications
9 International Corporation (SAIC) rather than TransCore. TransCore's tax manager had advised the
10 Department that SAIC acquired TransCore during March 1994 and sold it in September 1999, and that,
11 while under SAIC's ownership, TransCore was a separate corporate entity rather than a division of
12 SAIC. In addition, there are no references to TransCore on SAIC's certificate, which is dated
13 approximately two years before SAIC purchased TransCore. Thus, the resale certificate provided by
14 petitioner is not relevant because it was not issued by the person who made the purchase in dispute.
15 Nor does the purchase order provided for the disputed sale, standing alone, qualify as a resale
16 certificate. Thus, petitioner is not relieved from the tax due based on a valid resale certificate covering
17 this sale. Regarding whether the sale was, in fact, for resale, the Department received no reply to the
18 XYZ letter it sent to TransCore after the hearing, and there is no evidence establishing that the sale
19 was, in fact, for resale. Thus, we recommend no adjustment for the sale to TransCore.

20 **POST-HEARING RECOMMENDATION**

21 We recommend that the measure of tax be reduced to \$46,220,119 to account for the
22 adjustments to the deficiency for the Propeller purchases. We also continue to recommend that
23 collection action against petitioner with respect to tax on its purchases from Propeller be withheld until
24 after the Department has attempted to collect that tax from Propeller, and that petitioner be relieved of
25 liability for the use tax it owes to the extent that the Department is able to collect such amounts from
26 Propeller.

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

Statistical Sample –Sales for Resale
Evaluation of Results of Combined Samples for Strata 1 and 2

Confidence level	80%
Confidence interval	6.4386%
Total number of items in the population	14,263 in stratum 1 6,161 in stratum 2
Number of items randomly selected for the test	450 each, strata 1 and 2
Number of errors found	29 in stratum 1 18 in stratum 2
Whether stratification was used, and if so what was stratified	Stratum 1: \$0.01 - \$4,999.99 Stratum 2: \$5,000.00 - \$49,999.99 Stratum 3: \$50,000 or more, reviewed on an actual basis
Average dollar value of population	\$ 1,127 – stratum 1 \$13,033 – stratum 2
Dollar value of remaining errors	\$ 22,157 – stratum 1 \$207,911 – stratum 2
Dollar value of sample	\$ 523,242 – stratum 1 \$5,751,408 – stratum 2
Percentage of error	4.235% - stratum 1 3.615% - stratum 2
Were XYZ letters sent	Yes
Number of XYZ letters sent	Unknown*
Percentage of XYZ letters sent in relation to number of questioned items	Unknown*
Number of responses to XYZ letters received	Unknown**
Percentage of responses to XYZ letters received in relation to the number of XYZ letters sent	Unknown**
Number of responses to XYZ letters received accepted as proof of valid exempt/nontaxable sales	Unknown**
Percentage of responses to XYZ letters received accepted as proof of valid exempt/nontaxable sales	Unknown**
Number of responses to XYZ letters treated as taxable	1
Percentage of responses to XYZ letters treated as taxable	Unknown**

* The audit did not list or indicate the number of XYZ letters sent to petitioner’s customers.

** The audit did not list or indicate the number of responses to XYZ letters received.

Statistical Sample – Purchases Subject to Use Tax
Evaluation of Results of Combined Samples for Strata 1, 2, and 3

Transactions Examined	Paid bills
Confidence level	80%
Confidence interval	14.4634%
Total number of items in the population	32,778 – stratum 1 25,705 – stratum 2 8,077 – stratum 3
Number of items randomly selected for the test	700 – stratum 1 600 – stratum 2 500 – stratum 3
Number of errors found	34 – stratum 1 34 – stratum 2 26 – stratum 3
Whether stratification was used, and if so what was stratified	Stratum 1 – \$0.01 - \$999.99 Stratum 2 - \$1,000 - \$9,999.99 Stratum 3 - \$10,000 - \$99,999.99
Average dollar value of population	\$ 385 – stratum 1 \$ 3,442 – stratum 2 \$27,982 – stratum 3
Dollar value of remaining errors	\$ 13,921 – stratum 1 \$ 99,994 – stratum 2 \$437,187 – stratum 3
Dollar value of sample	\$ 279,013 – stratum 1 \$ 2,006,406 – stratum 2 \$13,933,098 – stratum 3
Percentage of error	4.989% – stratum 1 4.984% – stratum 2 3.138% - stratum 3