

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 SKIERS QUEST, INC. ) Account Number: SR JH 97-277702  
 6 Petitioner ) Case ID 361773  
 ) Castro Valley, Alameda County

7 Type of Business: Sales of boats and accessories

8 Audit period: 10/01/05 – 12/05/05

9 Item Disputed Amount

10 Unreported sales \$151,604  
 11 Failure-to-file penalty \$ 1,175

Tax Penalty

12 As determined: \$20,977.00 \$2,097.70  
 13 Adjustment - Appeals Division - 9,228.00 - 922.80  
 Proposed redetermination, protested \$11,749.00 \$1,174.90

14 Proposed tax redetermination \$11,749.00  
 15 Interest through 11/30/10 4,603.91  
 Penalties 1,174.90  
 16 Total tax, interest, and penalties \$17,527.81  
 Payments -10,550.90  
 17 Balance Due \$ 6,976.91

18 Monthly interest beginning 12/1/10 \$ 6.99

19 This matter was scheduled for Board hearing on November 18, 2010, but petitioner did not  
 20 respond to the Notice of Hearing. Accordingly, the Board Proceedings Division informed petitioner  
 21 that this matter will be presented to the Board for decision without oral hearing.

22 UNRESOLVED ISSUES

23 **Issue 1:** Whether adjustments are warranted to the estimated amount of unreported taxable  
 24 sales. We recommend no further adjustment.

25 Petitioner was in the business of selling new and used boats and related accessories. Petitioner  
 26 did not file a sales and use tax return for the fourth quarter 2005, its final quarter of business. The  
 27 Sales and Use Tax Department (Department) estimated unreported taxable sales for the quarter of  
 28 \$270,653, using average taxable sales reported for the fourth quarter 2004 (4Q04) and the 3Q05,

1 reduced by 20 percent to reflect a decline in sales as the business closed. Petitioner contends that the  
2 estimated amount of taxable sales is excessive.

3 At the time the D&R was written, petitioner had provided no records to support its contention,  
4 and the D&R recommended no adjustment. However, the Department subsequently issued  
5 determinations to Greg Moylan and David Anthony Miramontez as responsible persons under Revenue  
6 and Taxation Code section 6829. Each of those individuals protested the determinations issued to  
7 them, and each argued that the estimated amount of taxable sales for 4Q05 was excessive. Based on  
8 our review of bank deposits and available invoices, we concluded that the estimated amount of taxable  
9 sales for 4Q05 should be reduced to \$151,604. Neither petitioner nor any of the persons responsible  
10 for petitioner's sales and use tax compliance has provided evidence to support any further adjustment.

11 **Issue 2:** Whether relief of the penalty for failure to file a return is warranted. We find relief is  
12 not warranted.

13 We explained to petitioner that it could file a request for relief of the failure to file penalty, but  
14 the only request for relief submitted in connection with this penalty was submitted by Mr. Miramontez.  
15 That request merely repeats some of the reasons why Mr. Miramontez contends he should not be held  
16 liable under section 6829, without addressing why petitioner failed to file a return for 4Q05. Thus, we  
17 find relief is not warranted.

18 **OTHER DEVELOPMENTS**

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