

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION PETITION FOR REHEARING SUMMARY

3 In the Matter of the Petition for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 NNADI LINUS UDENGWU, ) Account Number: SR AP 97-031177  
 dba Ude Auto Sales ) Case ID 515515  
 6 )  
 7 Petitioner ) Diamond Bar, Los Angeles County

8 Type of Business: Used car dealer

9 Audit period: 4/1/05 – 6/30/08

<u>Item</u>	<u>Disputed Amounts</u>	
11 Understatement of reported taxable measure	\$2,037,041	
12 Negligence penalty	\$ 16,806	
	<u>Tax</u>	<u>Penalty</u>
13 As determined	\$264,349.22	\$26,434.96
14 Pre-D&R adjustment	- 66,371.84	- 6,637.17
15 Post-Board hearing adjustment	- 29,921.43	- 2,992.15
Proposed redetermination, protested	<u>\$168,055.95</u>	<u>\$16,805.64</u>
16 Proposed tax redetermination	\$168,055.95	
17 Interest through 01/31/14	88,878.50	
Negligence penalty	<u>16,805.64</u>	
18 Total tax, interest, and penalty	<u>\$273,740.09</u>	
19 Monthly interest beginning 02/01/14	<u>\$ 840.28</u>	

20 The Board held a hearing regarding this matter on February 1, 2012, and ordered a reaudit. On  
 21 August 13, 2013, the Board ordered a reduction of \$362,684 to the understatement of reported taxable  
 22 sales based on the findings of two post-Board hearing reaudits. Petitioner filed a timely petition for  
 23 rehearing.

24 **UNRESOLVED ISSUE**

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

26 At the Board hearing, the Board directed the Sales and Use Tax Department (Department) to  
 27 conduct a reaudit focused primarily on a comparison of all verifiable information regarding petitioner's  
 28 sales against database records of the Department of Motor Vehicles (DMV). Based on this comparison

1 and additional analysis of records previously provided, the Department concluded that various  
2 adjustments were warranted that resulted in a reduction of \$362,684 to the understatement of reported  
3 taxable sales, from \$2,399,725 to \$2,037,041.

4 In his petition for rehearing, petitioner contends that some of the statements attributed to him in  
5 material sent to the Board for consideration of his case on August 13, 2013, were not totally correct,  
6 and if he had attended the hearing on that day, he would have had the opportunity to present certain  
7 facts. Petitioner then states that he was a full-time employee of Los Angeles County for over 27 years,  
8 his brother handled most of the transactions in the vehicle dealership, neither he nor his brother  
9 collected or withheld sales tax reimbursement or use tax, and money for the business was never  
10 deposited into or withdrawn from any of his bank accounts. Petitioner argues that all of the vehicles  
11 purchased by his business for use within this state were transferred to a registered retail dealer, and the  
12 registered retail dealer is responsible for the tax on the sales of those vehicles. Petitioner asserts that  
13 all of the other vehicles he purchased were not registered in this state, and therefore the sales of those  
14 vehicles should be considered to be exempt sales in interstate or foreign commerce.

15 Petitioner did not specify which statements attributed to him in Board materials were not totally  
16 correct, and we are not aware of any such statements. We find that the facts stated in the petition for  
17 rehearing already were stated at the Board hearing in February 2012, and thus they already have been  
18 given due consideration. Further, petitioner's arguments regarding the disposition of the vehicles he  
19 purchased were fully discussed at the Board hearing, and the purpose of the reaudit ordered by the  
20 Board was to examine all available evidence regarding that issue. Results of the final reaudit show that  
21 audited total sales of \$3,644,727 were reduced by \$1,607,686 to allow for those sales for which there  
22 was sufficient evidence showing that the vehicles were shipped out of state, registered in California by  
23 other dealers, or for which petitioner had reported use tax directly to the DMV. We find that the  
24 reaudit conducted by the Department was done in accordance with the Board's order, and petitioner  
25 has not provided evidence of any inaccuracies. Petitioner has provided no new arguments or evidence  
26 with his petition for rehearing, or established any other basis to grant a rehearing. Therefore, we  
27 recommend that the petition for rehearing be denied.

28 Summary prepared by Lisa Burke, Business Taxes Specialist III