

**CALIFORNIA STATE BOARD OF EQUALIZATION**  
**APPEALS DIVISION SUMMARY FOR BOARD HEARING**

In the Matter of the Petition for Redetermination )  
Under the Sales and Use Tax Law of: )  
FRANCISCO R. CORONADO, ) Account Number: SR EA 97-957068  
dba Tailor Computers ) Case ID 396753  
Petitioner ) Laguna Niguel, Orange County

Type of Business: Computer hardware and software sales

Audit period: 07/01/03 – 06/30/06

<u>Item</u>	<u>Disputed Amount</u>	
Disallowed claimed exempt sales in foreign commerce	\$72,706	
Disallowed claimed nontaxable sales for resale	\$11,139	
Negligence penalty	\$ 1,168	
	<u>Tax</u>	<u>Penalty</u>
As determined:	\$17,218.36	\$1,721.88
Adjustment - Sales and Use Tax Department	<u>- 5,543.04</u>	<u>- 554.34</u>
Proposed redetermination	\$11,675.32	\$1,167.54
Less concurred	<u>- 5,507.97</u>	<u>00.00</u>
Balance, protested	<u>\$ 6,167.35</u>	<u>\$1,167.54</u>
Proposed tax redetermination	\$11,675.32	
Interest through 2/28/09	4,473.50	
10% penalty for negligence	<u>1,167.54</u>	
Total tax, interest, and penalty	\$17,316.35	
Payments	<u>900.00</u>	
Balance Due	<u>\$16,416.36</u>	
Monthly interest beginning 3/1/09	<u>\$ 71.84</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments are warranted to the disallowed claimed exempt sales in foreign commerce or claimed nontaxable sales for resale. We recommend no further adjustments.

Petitioner sells computer hardware and software via the Internet. On his sales and use tax returns, petitioner claimed all sales as nontaxable sales for resale. The Sales and Use Tax Department

1 (Department) examined sales on an actual basis. In a pre-conference reaudit, the Department found  
2 that claimed nontaxable sales of \$158,724 were not supported by adequate documentation. Petitioner  
3 contends that all his sales were either exempt or nontaxable sales, but he concedes that he does not  
4 have supporting documentation with respect to sales totaling \$74,879. Of the remaining disallowed  
5 sales of \$83,845 (\$158,724 - \$74,879), petitioner contends that sales totaling \$72,706 were exempt  
6 sales in foreign commerce and sales totaling \$11,139 were nontaxable sales for resale.

7 We have reviewed the documentation petitioner provided to support the claimed exempt sales  
8 in foreign commerce, and we find that it does not support further adjustments for several reasons, as  
9 detailed in the D&R. On several of the shipping documents, the dates and amounts do not correspond  
10 to the information shown on the related sales invoices. In his explanation of the documentation,  
11 petitioner stated that he sometimes inputs a lower value on the shipping document in order to minimize  
12 the custom fees charged to his customers. That practice of using false values on shipping documents  
13 makes it virtually impossible to verify what was shipped to whom and when. In addition to the  
14 inconsistencies between the shipping documents and invoices, we note that most of the shipping  
15 documents were FedEx Waybills which do not show either pickup or delivery of the merchandise.  
16 Thus, we find that the evidence is not sufficient to warrant further adjustments to the disallowed  
17 claimed exempt sales in foreign commerce.

18 The disputed amount of disallowed nontaxable sales for resale, \$11,139, represents petitioner's  
19 sales to MemoryTek in 2003. Petitioner asserts that the sales to MemoryTek should be allowed as  
20 valid sales for resale because he claims he had a valid resale certificate for MemoryTek. After the  
21 appeals conference, petitioner provided a resale certificate from MemoryTek, but the resale certificate  
22 is not valid because it does not include a seller's permit number. Further, even if it were an otherwise  
23 valid resale certificate, it was dated 2008, and thus was not timely for the sales at issue.

24 Further, we have researched the Board's computerized records and have found that  
25 MemoryTek did not hold a seller's permit from January 1, 2002, through December 31, 2003. It held a  
26 valid seller's permit from April 1, 2000, through December 31, 2001, when the permit was closed  
27  
28

1 because the partners did not file a return or respond to requests to do so. MemoryTek<sup>1</sup> then applied for  
2 a seller's permit as a wholesale business, and that permit shows a business start date of January 1,  
3 2004. There is no evidence that MemoryTek held a seller's permit or made sales in 2003, when the  
4 sales at issue were made. Thus, the available evidence is not sufficient to support petitioner's  
5 contention that his sales to MemoryTek were nontaxable sales for resale.

6 **Issue 2:** Whether petitioner was negligent. We find that he was and that the negligence penalty  
7 is appropriate.

8 The Department applied the negligence penalty because petitioner's records were inadequate  
9 and because this is petitioner's second audit, and he did not implement procedures to improve his sales  
10 and use tax reporting. We have compared the results of the two audits and note that the percentage of  
11 error decreased from 96.9 percent in the prior audit to 8.5 percent in this audit, while the sales in the  
12 respective audit periods increased from \$356,961 to \$1,853,871. Thus, we find that there was a  
13 substantial improvement in reporting, even during a period during which petitioner's business  
14 substantially increased.

15 However, petitioner did not provide adequate records, and he reported all of his sales as exempt  
16 or nontaxable without retaining adequate supporting documentation. Further, the records petitioner did  
17 produce appear to be inaccurate, such as the shipping documents with various inconsistencies, as  
18 discussed above. Further, petitioner states that he intentionally falsified shipping documents in an  
19 attempt to save money for his customers with respect to custom fees. Accordingly, despite the fact that  
20 petitioner improved his sales and use tax reporting, we find that his inadequate recordkeeping, along  
21 with the fact that he provided documents that appeared to be altered or falsified, constitute evidence of  
22 negligence.

### 23 **OTHER DEVELOPMENTS**

24 None.

25  
26 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

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28 <sup>1</sup> The partners shown on the seller's permit closed in 2001 are the same as those shown on the seller's permit opened in 2004.