

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 4/30/09	4,617.18	
10% penalty for negligence	<u>1,167.54</u>	
Total tax, interest, and penalty	\$17,460.04	
Payment	<u>- 900.00</u>	
Balance Due	<u>\$16,560.04</u>	
Monthly interest beginning 5/1/09	<u>\$ 71.84</u>	

This matter was previously scheduled for Board hearing on February 26, 2009, but was postponed to allow petitioner's new representative additional time to prepare for the hearing.

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.

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

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

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

27 **Issue 2:** Whether petitioner was negligent. We find that petitioner was negligent.
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