

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

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3 In the Matter of the Claim for Refund )  
4 Under the Sales and Use Tax Law of: )  
5 D.R. SYSTEMS, INC., dba Dominator Radiology ) Account Number: SR FH 99-275464  
6 ) Case ID 381450  
7 Claimant ) San Diego, San Diego County

8 Type of Business: Sales of image processing systems

9 Audit Period: 04/01/02 - 12/31/05

<u>Item</u>	<u>Claimed Refund</u>
11 Reporting errors resulting in overpayments	\$283,410.80

12 This matter was previously scheduled for Board hearing on October 29, 2008, and February 26,  
13 2009, but was postponed so that the Sales and Use Tax Department could review this matter further.

**UNRESOLVED ISSUE**

15 **Issue:** Whether claimant's January 7, 2005, letter is a claim for refund that covers the period  
16 April 1, 2002, through September 30, 2002. We conclude that the letter is not a claim for refund, and  
17 therefore no refund is available for the period April 1, 2002, through September 30, 2002.

18 Claimant sells integrated medical diagnostic imaging and information management systems. In  
19 2004, a new controller discovered tax overpayments by a prior controller. During an audit of the  
20 period October 1, 2002, through December 31, 2005, the Sales and Use Tax Department (Department)  
21 found overpayments primarily representing excess tax reimbursement related to nontaxable service  
22 contracts. Claimant also had reported excessive amounts of use tax on estimated purchases of tangible  
23 personal property.

24 On May 12, 2006, claimant filed a claim for refund of \$649,464 for the period April 1, 2002,  
25 through December 31, 2005. The claim was timely for the period April 1, 2003, through December 31,  
26 2005, under the three-year limitations period of Revenue and Taxation Code section 6902, and was  
27 timely for the period October 1, 2002, through March 31, 2003, because claimant had provided a  
28 waiver of limitations for those two quarters pursuant to Revenue and Taxation Code section 6488

1 extending the time during which the Department could issue a determination to July 31, 2006 (thereby  
2 also extending the time during which claimant could file a timely claim for refund to the same date).

3 The Department has issued a refund of \$366,053.20 for the period October 1, 2002, through  
4 December 31, 2005. Claimant does not dispute the amount of the refund issued and concedes that the  
5 May 12, 2006, claim for refund was not timely for the period April 1, 2002, through September 30,  
6 2002. However, claimant contends that a letter it submitted to the Board on January 7, 2005,  
7 constitutes a valid, timely claim for refund of \$283,410.80 for the period April 1, 2002, through  
8 September 30, 2002.

9 When claimant recognized in 2004 that there had been overpayments of sales and use taxes, it  
10 did not file a claim for refund. Instead, claimant asserted the overpayments as a credit on its sales and  
11 use tax return for the third quarter of 2004, and did not make its July prepayment for 2004. The  
12 Department billed claimant a penalty for failure to make a timely July 2004 prepayment. On  
13 January 7, 2005, claimant submitted a letter that the Department regarded as a request for relief of the  
14 penalty, which the Department approved. It is that January 7, 2005 letter that claimant now contends  
15 was a claim for refund covering the period April 1, 2002, through September 30, 2002.

16 The January 7, 2005 letter requests relief from a penalty and does not convey that claimant  
17 wants overpayments refunded. Also, the letter does not make any statement that could be construed as  
18 “specific grounds upon which the claim is founded,” as required by Revenue and Taxation Code  
19 section 6904. Accordingly, we find that this letter is not a valid claim for refund, and there is no  
20 refund available for the period April 1, 2002, through September 30, 2005. We note also that if  
21 claimant had filed a timely claim, the Department would have been required to review claimant’s  
22 records to verify the amount of any overpayment, and with respect to excess tax reimbursement  
23 remitted to the Board, a refund would be warranted only if claimant were to establish the return of such  
24 excess tax reimbursement to its customers.

### 25 OTHER DEVELOPMENTS

26 The Department requested that this matter be postponed from its previously scheduled hearing  
27 dates so it could review the present claim in light of its discovery that its Return Analysis Section had  
28 given claimant certain advise regarding claiming credits on returns. After that additional review, the

1 Department concluded that overpayments claimant reported on its sales and use tax returns for the  
2 second and third quarters of 2002 were unrelated to any audit or claim for refund issue in the present  
3 case, and that the Department had given claimant credit for all overpayments claimed on those returns.  
4 Accordingly, the Department's position in the present matter remains that the claim for refund should  
5 be denied.

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8 Summary prepared by Rey Obligacion, Business Taxes Specialist III

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