

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:)
ELUFA CORPORATION) Account Number: SR AA 97-820457
Petitioner) Case ID 350440
_____) Monterey Park, Los Angeles County

Type of Business: Commercial printer

Audit period: 10/01/01 – 09/30/04

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Disallowed claimed sales for resale	\$19,351		
Interest (as of 9/30/09)	\$8,653		
Amnesty interest penalty	\$417		
As determined:	\$17,078.05		\$2,160.16
Adjustment - Appeals Division	- 1,374.77		-2,160.16
Proposed redetermination	\$15,703.28		<u>00.00</u>
Less concurred	-14,106.82		
Balance, protested	<u>\$ 1,596.46</u>		
Proposed tax redetermination	\$15,703.28		
Interest through 9/30/09	<u>8,653.00</u>		
Total tax and interest	\$24,356.28		
Payments	- 16.50		
Balance Due	<u>\$24,339.78</u>		
Monthly interest beginning 10/01/09	<u>\$ 104.58</u>		

UNRESOLVED ISSUES

Issue 1: Whether further adjustments are warranted to the amount of disallowed claimed sales for resale. We recommend no further adjustment.

Petitioner operates a printing shop. During the audit, the Sales and Use Tax Department (Department) examined all of the sales invoices petitioner issued during the audit period and concluded that some of the claimed nontaxable sales for resale represented taxable sales. Petitioner disputed the Department's conclusion with respect to its claimed sales for resale to four customers.

1 The Department disallowed \$10,554 in claimed sales for resale to American Latex Corp.,
2 which is 50 percent of petitioner's sales totaling \$21,108 made per invoices dated January 7, 2002, and
3 March 13, 2003. The Department also disallowed \$12,415 in claimed sales for resale to Line One
4 Laboratories (which is related to American Latex and uses similar catalogs), which is 50 percent of
5 petitioner's sales totaling \$24,830 made per invoices dated April 2, 2003, and October 27, 2003.
6 During the audit, petitioner provided incomplete resale certificates dated January 5, 2001 (they do not
7 describe the property to be purchased for resale) and, for Line One Laboratories, a completed resale
8 certificate dated December 9, 2004, that is well after the subject sales. Both purchasers completed
9 XYZ letters stating that the catalogs were purchases "for resales that go along with the products."

10 The Department did not accept the documents petitioner submitted as showing the sales were
11 for resale, but after contacting each purchaser, obtained information sufficient to convince it that the
12 purchasers resold a portion of the catalogs they purchased. The Department allowed 50 percent of the
13 sales as resales and disallowed the remaining 50 percent. Petitioner asserts that these two purchasers
14 resold all the catalogs, and to the extent that they did gift any of the catalogs, the two purchasers
15 should be responsible for the tax because petitioner had no control over whether they sold or gave
16 away the catalogs. We conclude that, as the retailer, petitioner is liable for any sales tax due on the
17 retailer sales, but we also found in the D&R that, based on the facts, the allowance for resales should
18 be increased to 75 percent of the sales to these two customers. Accordingly, we recommend that the
19 measure of deficiency for these sales be reduced by \$11,484, leaving disallowed claimed resales to
20 these two customers of \$11,484. We recommend no further adjustments.

21 After reaudit adjustments, there remains \$3,248 in disallowed claimed sales for resale of dies,
22 plates, film and similar items used by petitioner to make printed matter for sale to Carrand Company,
23 Inc., the last invoice for which was issued on February 23, 2004. Petitioner supported its assertion that
24 these sales were for resale with an untimely and incomplete resale certificate (does not describe the
25 property to be purchased for resale) dated December 10, 2004, and an XYZ letter response indicating
26 that the purchases were for resale. However, based on statements made by Carrand indicating that
27 certain items were not resold, the Department did not accept the XYZ letter response and instead
28 included the sales in the taxable measure due.

1 Petitioner contends that its sale of these items to Carrand was not taxable because the items
2 sold “go to the product.” However, the dies, plates, film, and similar items were “special printing aids”
3 which petitioner physically used as manufacturing aids in the printing process. (Cal. Code Regs.,
4 tit. 18, § 1541, subd. (a)(12).) Since there is no evidence that petitioner explicitly retained title to the
5 special printing aids, under the special rules adopted by regulation, it is irrebuttably presumed that it
6 resold them to Carrand prior to use. (Cal. Code Regs., tit. 18, § 1541, subd. (c)(1)(B) (this generally
7 avoids the possibility of the printer’s owing use tax on the cost and also owing sales tax on the full
8 sales price of the printed matter, including the cost of the special printing aids built into that sales
9 price).) Thus, tax will apply only to the sales price of the special printing aids, and that tax is sales tax
10 owed by petitioner unless it can establish that it sold those special printing aids for resale by Carrand
11 *before* petitioner used the items in the printing process. Under the specific regulatory rules adopted by
12 the Board to eliminate any confusion about the application of tax in these circumstances:

13 “A printer will not be regarded as selling special printing aids for resale unless: 1) the
14 printer separately states the sale price of the special printing aids in an amount not less
15 than the sale price of the special printing aids, or their components, to the printer; and 2)
16 the printer accepts a timely and valid resale certificate in good faith from the printer’s
17 customer stating that the special printing aids are purchased for resale.... Otherwise, the
18 printer will be regarded as selling the special printing aids at retail, and will owe tax on
19 that retail sale accordingly.” (Cal. Code Regs., tit. 18, § (c)(2)(B).)

18 Petitioner did not take a timely and valid resale certificate, let alone one that stated the special
19 printing aids were purchased for resale. Accordingly, petitioner’s sale of the special printing aids to
20 Carrand was a retail sale for which it is liable for sales tax. We recommend no adjustment.

21 Finally, petitioner disputes the disallowed claimed resales of \$4,618 which petitioner billed to
22 Tatung Company on several invoices issued from May 12, 2003, through June 22, 2004. In support of
23 its contention that these sales were for resale, petitioner provided an untimely resale certificate dated
24 November 30, 2004, which describes the property to be purchased for resale as “printing materials for
25 refurbished items labels, for refurbished items (Plant C),” and an XYZ letter response from Tatung
26 stating that it purchased the subject property for resale and resold it. The Department did not accept
27 the sales as for resale. Petitioner asserts that the sales should be allowed as resales because Tatung
28 used the shipping labels to ship repaired or refurbished items to consumers, and Tatung includes the

1 repair feedback forms in the containers for repaired or refurbished items that are shipped to consumers.
2 That is, the labels were shipping labels used by Tatung. As such, petitioner's sales of the labels to
3 Tatung were taxable retail sales. (Cal. Code Regs., tit. 18, § 1589, subd. (c)(1).) Similarly, the forms
4 were also consumed by Tatung, to obtain feedback from its customers, and as such petitioner's sales of
5 the forms were also taxable retail sales. We recommend no adjustment.

6 **Issue 2:** Whether interest should be relieved. We recommend relief be denied.

7 Petitioner submitted a request for relief of interest pursuant to Revenue and Taxation Code
8 section 6593.5, signed under penalty of perjury, asserting that there were unreasonable delays "due to
9 the debatable and questionable items and transactions in the process of the audit." The Board may
10 relieve interest where the failure of the taxpayer to pay tax is due in whole or in part to an unreasonable
11 error or delay by a Board employee acting in his or her official capacity, provided no significant aspect
12 of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (Rev. & Tax. Code, §
13 6593.5; Cal. Code Regs., tit. 18, § 1703, subd. (b)(1)(E).) We find that the Department acted promptly
14 at each step in the audit process, and that all, or almost all, delays were attributable to petitioner's
15 requests for additional time to review the audit workpapers and provide supporting documentation.
16 We find further that there has been no unreasonable delays in the appeals process. Accordingly, we
17 conclude there is no basis for relief of interest.

18 AMNESTY

19 The amnesty interest penalty will be applicable when the liability becomes final because
20 petitioner did not apply for amnesty. (Rev. & Tax. Code, § 7074, subd. (a).) Petitioner has requested
21 relief from the amnesty interest penalty, pursuant to Revenue and Taxation Code section 6592, on the
22 grounds that: (1) the Department did not inform petitioner of the amnesty program while it was
23 performing the audit; (2) petitioner had no basis for requesting amnesty prior to the March 31, 2005,
24 deadline because the Department's audit was not complete at that time; and (3) when petitioner asked
25 the Department about the amnesty program, the Department stated the deadline for applying for
26 amnesty had passed.

27 The Department provided preliminary audit workpapers to petitioner in January 2005, and the
28 Department's Assignment Contact History shows that the Department sent information regarding the

1 amnesty program to petitioner and its accountant on February 1, 2005. Accordingly, we find that
2 petitioner was aware of the amnesty program and was aware of the potential liability before the
3 March 31, 2005 deadline, even though the audit was not complete by that date. Thus, we conclude that
4 petitioner has not shown that its failure to participate in the amnesty program was due to reasonable
5 cause and circumstances beyond its control, and recommend relief from the amnesty interest penalty
6 be denied.

7 **RESOLVED ISSUES**

8 We recommend that petitioner be given the benefit of doubt and the negligence penalty and
9 amnesty double negligence penalty be deleted because this is petitioner's first audit, and it appears that
10 a significant portion of the errors are the result of unfamiliarity with the Sales and Use Tax Law and
11 regulations.

12 **OTHER DEVELOPMENTS**

13 None.

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16 Summary prepared by David H. Levine, Tax Counsel IV
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