

**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: )  
RODNEY EUGENE LANE, dba ) Account Number: SR BH 97-952243  
R E L Custom Cabinetry ) Case ID 415962  
Petitioner ) San Carlos, San Mateo County

Type of Business: Construction contractor

Audit period: 01/01/04 – 12/31/06

<u>Item</u>	<u>Disputed Amount</u>
Claimed relief of interest	\$4,661
Tax as determined and concurred:	\$23,389.57
Proposed tax redetermination	\$23,389.57
Interest through 8/31/07 (tax paid in full on 8/29/07)	<u>4,661.44</u>
Total tax and interest	\$28,051.01
Payments	<u>23,480.57</u>
Balance Due	<u>\$ 4,570.44</u>

A Notice of Appeals Conference was mailed to petitioner’s address of record and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We wrote petitioner to offer him the opportunity to provide additional arguments and evidence in writing, and petitioner responded by telephone, reiterating his position that the interest should be abated because he was incorrectly advised by Board staff.

**UNRESOLVED ISSUE**

**Issue:** Whether petitioner is entitled to relief from the interest. We find there is no basis for relief of interest.

Petitioner is a construction contractor who manufactures, sells, and installs cabinets. Petitioner did not pay sales tax reimbursement or report tax on his purchases of materials, some of which he used to manufacture cabinets that were sold over the counter or to construction contractors for installations. Most of the cabinets at issue were manufactured and sold at retail, with no installation, although petitioner sometimes installed cabinets. On his sales and use tax returns, petitioner reported the total

1 amount of his cabinet sales, whether installed or not, and then claimed the difference between the  
2 selling price and his cost of material and labor to manufacture the cabinets as a tax-paid purchases  
3 resold deduction.

4 The Sales and Use Tax Department (Department) concluded that petitioner was liable for sales  
5 tax on the entire selling price of the cabinets sold over-the-counter. Also, the Department concluded  
6 that the cabinets petitioner installed were prefabricated. Since prefabricated cabinets are fixtures, the  
7 Department found that petitioner was liable for tax on the selling price of those fixtures. The  
8 Department reviewed petitioner's sales on an actual basis and computed the difference between the  
9 amount of each retail sale and the amount petitioner reported with respect to the transaction.

10 Petitioner does not dispute the audit findings, and he has paid the tax in full. Petitioner disputes  
11 the interest added to the determination on the basis that his failure to properly report the tax is the  
12 result of incorrect instruction received at a Board of Equalization class on sales and use taxes when he  
13 began his business. Further, petitioner asserts that he has always reported and paid tax consistently. In  
14 addition, he notes that he promptly paid the determined tax.

15 Relief of interest is available only under narrow circumstances. The only basis relevant here is  
16 provided by Revenue and Taxation Code section 6596, which allowed the relief of tax, interest, and  
17 penalty where the taxpayer's failure to make a timely return or payment was due to reasonable reliance  
18 on written advice from the Board. Petitioner has filed a statement, signed under penalty of perjury,  
19 requesting relief from the interest on the grounds that his failure to timely pay the tax was the result of  
20 petitioner's reliance on incorrect information provided by the Board during a class. However, section  
21 6596 establishes specific conditions in order for relief to be considered: the person seeking relief must  
22 have requested advice from the Board in writing, including all relevant facts, the Board must have  
23 responded in writing to the person's written request, and the person must have reasonably relied on  
24 that written advice in failing to pay the proper tax. These conditions have not been satisfied, and we  
25 thus find that there is no basis upon which to consider granting petitioner relief of interest.

#### 26 **OTHER DEVELOPMENTS**

27 None.

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