

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:)
ON LINE AUTO GROUP, INC.) Account Number: SR FH 97-218370
Case ID 353083
Petitioner) San Diego, San Diego County

Type of Business: Used Car Dealer
Audit Period: 7/1/01-6/30/04

<u>Item</u>	<u>Disputed Amount</u>
Disallowed claimed nontaxable sales	\$232,800
	<u>Tax</u>
As determined	\$28,594.38
Concurred in	<u>10,559.12</u>
Protested	<u>\$18,035.26</u>
Proposed tax redetermination	\$28,594.38
Interest (tax paid in full 6/16/08)	<u>12,004.38</u>
Total tax and interest	\$40,598.76
Payments	<u>29,050.00</u>
Balance due	<u>\$11,548.76</u>

UNRESOLVED ISSUES

Issue 1: Whether petitioner has proven that certain sales were nontaxable sales for resale or exempt sales in interstate or foreign commerce. We conclude that it has not.

Petitioner is a used car dealer located in San Diego, California. During the audit period, petitioner reported its sales for resale, as well as sales in interstate and foreign commerce, on its sales and use tax returns as nontaxable sales for resale. Petitioner was previously audited for the period April 1, 1998, through March 31, 2001. The Sales and Use Tax Department (Department) examined petitioner's claimed sales for resale on an actual basis, and found that petitioner did not have adequate documentation to support \$235,495 of its claimed nontaxable sales. The Department stated that the certificates of delivery provided by petitioner in support of these sales as exempt sales in interstate or

1 foreign commerce were insufficient to support the exemption because the individuals who signed the
2 trip permits and certificates of delivery were either the purchasers themselves or individuals who
3 appeared to be friends or relative of the purchasers. Additionally, none of the certificates of delivery
4 contain signatures that were notarized outside California.

5 Petitioner contends that the disallowed sales were exempt sales in interstate and foreign
6 commerce, or nontaxable sales to Mexican merchants for resale. After the appeals conference,
7 petitioner submitted the same documents that the Department reviewed during the audit, plus some
8 additional documents that relate to specific transactions. Petitioner alleges that: (1) the vehicles were
9 eventually transported outside California; (2) the vehicles were delivered outside California by its
10 employees; (3) the vehicles were exported to Mexico; (4) the vehicles were sold for resale to Mexican
11 merchants; and (5) a certain vehicle was transported to Nevada by a tow truck company.

12 We have reviewed petitioner's submissions and conclude that petitioner did not provide
13 satisfactory evidence to show that the vehicles were delivered to the purchasers outside of California.
14 Since the individuals who took delivery of the vehicles at petitioner's San Diego dealership were either
15 the purchasers or their representatives, we conclude that the sales were taxable in-state sales and
16 deliveries, and the fact that petitioner has proven that the vehicles were later transported outside California
17 is irrelevant. (Cal Code Regs., tit. 18 § 1620, subd, (a)(3)(A).)

18 We find that the certificates of delivery and Carfax reports that petitioner submitted in support
19 of its contention that its employees delivered the vehicles outside California are inadequate because
20 they do not prove that petitioner's employees delivered the vehicles to the purchasers outside
21 California. To prove that the deliveries were made to the purchasers outside California, at a *minimum*
22 petitioner must provide receipts for expenses incurred outside California that tie into the alleged
23 deliveries. Since petitioner has not proven that the vehicles were delivered outside California, we
24 conclude that the sales were taxable in-state sales and deliveries.

25 We find that petitioner did not provided satisfactory evidence to show that certain vehicles
26 were exported to Mexico. Petitioner did not provide any proof that the individuals who picked-up the
27 vehicles at its dealership and signed the certificates were either its own employees, carriers, export
28 packers, custom brokers or person engaged in the business of preparing property for export, nor has

1 petitioner provided any bills of lading or export/import documents to prove that the vehicles were
2 properly exported to Mexico. Petitioner also did not provide export/import documents to prove that a
3 certain vehicle was exported to Honduras.

4 Petitioner submitted a certificate of delivery and an invoice from American Export Lines
5 (AEL), both dated February 2, 2002 (3 months after the sale), in support of a sale that was made on
6 October 24, 2001, to Rubin Ely, a known California resident, as an exempt foreign commerce sale.
7 Petitioner alleges that its employees delivered the vehicle directly to AEL for export to Israel. The
8 Department disallowed the sale because the invoice from AEL was issued to the purchaser, the
9 purchaser signed a statement of fact agreeing to provide petitioner with copies of shipping documents,
10 or bills of lading, and because petitioner had no certificate of delivery on file. We reject the certificate
11 of delivery since it appears to have been prepared after the fact. Since the purchaser fully paid for the
12 vehicle on the same date that the sales contract was signed, and also signed the statement of facts agreeing
13 to provide petitioner with shipping documents and the invoice from AEL was issued to the purchaser, we
14 conclude that this was a taxable in-state sale and delivery to the purchaser, who delivered the vehicle to
15 AEL three months later for export to Israel.

16 We find also that petitioner did not provide satisfactory evidence, such as valid Mexican merchant
17 cards or XYZ confirmation letters, to support its sales as valid sales for resale to Mexican merchants. The
18 Department was unable to find any records that Auto Colisiones DE BC was a Mexican merchant, and the
19 Mexican merchant identification number that was provided in support of the sale to Paolao Automotriz
20 had expired one year before the sale. Furthermore, petitioner did not provide satisfactory evidence to
21 show that it hired any carrier to deliver a certain vehicle to Nevada.

22 **Issue 2:** Whether relief should be granted based on petitioner's allegation that it received and
23 relied upon misinformation in a prior audit. We concluded that no relief is warranted.

24 Petitioner contends that it was advised in the prior audit to use the same certificate of delivery
25 forms to document its exempt sales in interstate and foreign commerce that were rejected in this audit.
26 Petitioner asserts that the prior auditor actually downloaded the form from the Board's own website,
27 and that it was not advised that it needed to keep any receipts, as proof of delivery outside California.
28 Petitioner argues that since it used the certificate of delivery forms based on the advice it received in

1 the prior audit, it is entitled to relief from all tax and interest assessed in the current audit. The
2 Department asserts that the certificate of delivery form is not a document that the Board created,
3 therefore, the prior auditor could not have downloaded it from the Board's website.

4 We have reviewed the prior audit work papers. The verification comments from the prior audit
5 indicate that petitioner made sales to California residents who took possession of the vehicles in
6 California, and petitioner alleged that the purchasers lived in Mexico or other states. The comments
7 indicate that the prior auditor assessed the sales tax. Therefore, the same problems were noted in the
8 prior audit and petitioner was informed that if delivery is made to the purchaser in California, sales tax
9 applies. The verification comments also confirm that petitioner did have bills of lading to support
10 some claimed exempt sales in interstate commerce, and that the auditor reminded petitioner that it must
11 deliver the vehicles outside California, and also retain proof of delivery. No where in the verification
12 comments does it indicate that the auditor provided the certificate of delivery form to petitioner, or
13 advised petitioner to use the form. Thus, the verification comments do not support petitioner's
14 allegation that the prior auditor provided the certificate of delivery form, told petitioner to use the
15 form, or that the auditor failed to inform petitioner that it needed to keep receipts to prove delivery
16 outside California. Accordingly, we conclude that petitioner is not entitled to relief from tax under
17 Revenue and Taxation Code section 6596.

18 AMNESTY

19 Petitioner did not apply for amnesty. Since the determination was issued after the amnesty
20 period, the determination included a 50 percent amnesty interest penalty in the amount of \$1,462.76.
21 (Rev. & Tax. Code, § 7074, subd. (a).) Petitioner has filed a request for relief of the amnesty penalty.
22 Petitioner contends that during the audit, it changed representatives, and that petitioner was under the
23 impression that one of its representatives had applied for amnesty on its behalf.

24 The auditor's activity log shows that the auditor discussed the amnesty program with
25 petitioner's former representative and, based on what the log indicates the auditor was told by the
26 former representative, satisfies us that, as it alleges, petitioner had relied on its former representative to
27 submit the application for amnesty. Thus, we find that petitioner has established reasonable cause for
28 failure to apply for amnesty. Accordingly, we recommend relief of the amnesty interest penalty if,

1 within 60 days of issuance of the Notice of Redetermination in this matter, petitioner either pays the
2 amnesty-eligible amount remaining due in full (which consists entirely of interest) or enters into a
3 qualifying payment agreement to do so within 13 months and successfully completes that agreement.¹

4 **OTHER DEVELOPMENTS**

5 None.

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10 Summary prepared by John K. Chan, Business Taxes Specialist I

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27 ¹ The D&R mistakenly conditioned relief on payment or entry into the installment agreement within 60 days of the Notice
28 of Redetermination, when it should have set a 30-day period for payment or entry into the installment agreement as a
condition for relief. However, we note that petitioner has paid the amnesty-eligible tax in full, and at this point, we do not
alter our recommendation.