

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Administrative Protest)
 4 Under the Sales and Use Tax Law of:)
 5 ON SPORTS, INC.) Account Number: SR KH 97-659210
) Case ID 334978
 6 Taxpayer) Stockton, San Joaquin County

7 Type of Business: Manufacturer and Distributor of Sports apparel

8 Audit Period: 7/1/00 to 9/30/03

9 Item Measure in Dispute

10 Disallowed claimed sales for resale \$681,680

	<u>Tax</u>	<u>Penalty</u>
11 As established in the audit	\$61,028.79	
12 Credit for tax reported on Amnesty returns	<u>-42,478.00</u>	
13 As determined	\$18,550.79	
14 Finality penalty		\$1,678.94
15 Adjustment: Appeals Division	<u>-3,354.74</u>	<u>-1,678.94</u>
16 Proposed tax liability	\$15,196.05	<u>\$0.00</u>
15 Concurred in amount	-4,359.46	
16 Add back tax reported on amnesty returns	<u>+42,478.00</u>	
16 Protested	<u>\$53,314.59</u>	
17 Audited tax less adjustment	\$57,674.05	
18 Interest	<u>2,320.62</u>	
18 Total tax and interest	\$59,994.67	
19 Payments per amnesty returns	-42,478.00	
19 Payments against determination	<u>-13,506.48</u>	
20 Balance	<u>\$4,010.19</u>	
21 Monthly interest beginning 8/1/09	<u>\$11.26</u>	

22 **UNRESOLVED ISSUES**

23 **Issue 1:** Whether taxpayer has established that sales made to Knotty Team Sports were sales
 24 for resale. We conclude that taxpayer has not.

25 The Sales and Use Tax Department (Department) examined taxpayer's claimed sales for resale
 26 on an actual basis and accepted as nontaxable those sales which were supported by resale certificates,
 27 as well as those sales for which XYZ responses indicated that the sales were for resale. In instances
 28 where no XYZ response was received, the Department examined the Board's computerized records

1 and allowed the claimed sales when the records indicated that the customer was in the business of
2 selling apparel. In instances where the Department was unable to establish whether the taxpayer's
3 customers held a seller's permit or resold the merchandise purchased from taxpayer or where no XYZ
4 response was received from taxpayer's customers, the Department disallowed the taxpayer claimed
5 sales for resale. In our Decision and Recommendation (D&R) and Supplemental D&R (SD&R), we
6 recommended several reductions to the disallowed claimed sales for resale.

7 The only remaining protested transactions for this item are taxpayer's sales to Knotty Team
8 Sports, which taxpayer contends were sales for resale even though Knotty Team Sports did not issue a
9 resale certificate to taxpayer or respond to the XYZ letter. Taxpayer provided the purchase history for
10 Knotty Team Sports as well as a few copies of invoices which taxpayer believes show that these sales
11 were for resale. Taxpayer maintained that Knotty Team Sports was a retailer of sports apparel and that
12 its sales to Knotty Team Sports were of such a high volume and frequency that it is clear that the
13 merchandise was resold despite the fact that the Department could not locate a seller's permit for this
14 customer. Taxpayer noted that the Department made numerous adjustments for sales for resale to
15 other similar retailers in the audit and believes that these disallowed sales should be allowed as well.

16 Over a two-year period, taxpayer made 94 sales to Knotty Team Sports for a total of
17 \$19,569.20 for multiple quantities and sizes of similar items. This pattern of sales is consistent with
18 sales for resale *but* is also consistent with purchases by a customer for its own use. Approximately 60
19 percent of the invoices for sales to this customer were for sales under \$250, approximately 20 percent
20 of the invoices were for sales from \$251 to \$500, and 20 percent were for sales from \$501 to \$1,273.
21 In its January 14, 2008 correspondence, taxpayer indicated that the products sold to Knotty Team
22 Sports were resold through Knotty's retail location.¹ However, our search for a business at the noted
23 address was unsuccessful, and based on an aerial view of the location, it appears to be a residence in a
24 residential area. Based on this and the lack of the purchaser's registration as a seller, the failure of
25 taxpayer to have taken and retained a resale certificate, and the failure of the purchaser to respond to
26

27 ¹ Taxpayer makes this statement on page 2 of the summary in the correspondence binder dated January 14, 2008. In
28 taxpayer's RFR dated July 11, 2008, taxpayer denies that this statement was made.

1 the XYZ letter, we conclude that taxpayer has failed to establish that Knotty Team Sports actually
2 resold the merchandise purchased from taxpayer, and recommend no further adjustments.

3 **Issue 2:** Whether taxpayer;s sales to nonprofit youth sport organizations (YSO) were sales for
4 resale. We find that taxpayer has not established that the sales were for resale.

5 Taxpayer sold athletic apparel to YSO who claim to be non-taxable youth organizations as
6 defined by Internal Revenue Code section 501, subdivision (c). Taxpayer did not collect sales tax
7 reimbursement or remit sales tax in connection with these sales. The Department determined that the
8 YSO were not retailers because the YSO failed to meet satisfy the four conditions provided in
9 California Code of Regulations, title 18 section (Regulation) 1597, subdivision (h), to be considered a
10 retailer. Since the YSO were not retailers of the merchandise, that meant that petitioner's sales were at
11 retail (either to the YSO as consumers or through its agents, the YSO, to purchasers from the YSO).
12 The Department thus disallowed all taxpayer's claimed sales for resale to the YSO.

13 Taxpayer contends that the YSO were retailers making retail sales of uniforms. Taxpayer
14 further contends that the purchase history of these leagues support the fact that the YSO sold the
15 uniforms because they had to purchase new uniforms each season. Taxpayer supplied purchase history
16 for thirty YSO, website information showing merchandise for sale by some YSO, and signup forms
17 from some YSO showing the cost of the uniform was included in the registration fee.

18 In our D&R, we concluded that the YSO were not statutory consumers under Regulation 1597
19 subdivision (e), because they did not produce the property they sold, so resolution of the issue of
20 whether taxpayer's sales to the YSO were for resale depended on whether the YSO were retailers or
21 were acting as agents of taxpayer. We found that the YSO were acting as taxpayer's agent in making
22 sales to consumers under Regulation 1597, subdivision (h), so that taxpayer was the retailer. In our
23 SD&R issued in response to taxpayer's Request for Reconsideration, we reversed both of these
24 findings. We found that taxpayer's sales to the YSO were direct sales to those person, and that after
25 the sales to the YSO were complete, taxpayer had no further involvement and the YSO's sales were
26 not made on taxpayer's behalf. Thus, we found that the YSO did not sell the merchandise as the agent
27 of taxpayer.

28 Since the YSO purchased the merchandise from taxpayer on their own behalf, they did so either

1 as consumers or as retailers. Contrary to the statement in the D&R, we found in the SD&R that the
2 property at issue did qualify as property produced by the members of the YSO, based on Business
3 Taxes Law Guide annotation 390.0130 (3/17/89).² We also found that the YSO sold the merchandise
4 they purchased from taxpayer on an intermittent basis, and that the YSO were thus the consumers of
5 such property as provided in Regulation 1597, subdivision (e). Thus, taxpayer's sales to the YSO were
6 retail sales for which taxpayer is liable for sales tax.

7 **AMNESTY**

8 The amnesty interest penalty does not apply because taxpayer filed an application for amnesty
9 and entered into a qualifying installment payment plan.

10 **RESOLVED ISSUES**

11 We have recommended that several disallowed claimed sales for resale be allowed, and that
12 relief from the penalty for failure to timely pay the determination be granted if taxpayer pays the
13 remaining unpaid tax liability within 30 days of the mailing of the notice of the Board's final decision.

14 **OTHER DEVELOPMENTS**

15 None.

16
17 Summary prepared by Rey Obligacion, Business Taxes Specialist III
18
19
20
21
22
23
24
25
26

27 ² Annotations are intended to provide guidance regarding the interpretation of the Sales and Use Tax Law with respect to
28 specific factual situations; they do not have the force and effect of law. (Cal. Code Regs., tit.18, § 5700, subs. (a)(1),
(c)(2).