

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination)
and Claim for Refund Under the Sales and Use)
Tax Law of:)
RENIX CORPORATION,) Account Number: SR Y EH 24-747428
dba Newport Boats) Case ID's 317697, 318253
Petitioner) Corona, Riverside County

Type of Business: New and used boat dealer
Audit/Claim Period: 1/1/01 – 6/30/04

<u>Item</u>	<u>Measure</u>
Unreported tax collected on broker sales	\$218,458 ¹ (Case ID 317697)
Amnesty interest penalty	\$2,631
	<u>Tax</u>
As determined	\$68,774.10
Adjustment: Sales and Use Tax Department	-11,223.04
Appeals Division	-31,181.54
Proposed redetermination	\$26,369.52
Amount concurred in	<u>-9,353.82</u>
Protested	<u>\$17,015.70</u>
Proposed tax redetermination	\$26,369.52
Interest through 6/30/09	15,992.69
Amnesty interest penalty	<u>2,631.38</u>
Total tax and interest	\$44,993.59
Payments	<u>-1,899.40</u>
Balance due	<u>\$43,094.19</u>
Monthly interest beginning 7/1/09	<u>\$163.13</u>

UNRESOLVED ISSUE

Issue: Whether petitioner has established that it properly reported all use tax collected on the broker sales remaining in dispute. We find that petitioner failed to do so.

Petitioner, a corporation doing business as Newport Boats, is a seller of new and used boats and yachts and also acts in the capacity of a broker on sales of boats and yachts. At issue are the sales of

¹ The D&R shows the measure of this item as \$223,030, but the Department has reduced the measure to \$218,458.

1 two vessels for which petitioner acted as a broker between seller and buyer. In both transactions, the
2 total purchase price, including an amount designated as California tax, was collected by petitioner and
3 deposited into petitioner's trust account. In both cases, the amount designated as California tax was
4 later refunded to the purchasers by petitioner. The buyer of one vessel, Mr. James Laurin, was given a
5 "Buyer's Final Statement" dated July 24, 2002, showing a purchase price of \$185,000 and \$14,339.05
6 in state use tax. On August 5, 2002, petitioner issued a check to Mr. Laurin for \$14,339.05. In the sale
7 to the other buyer, Mr. John Gilman, the audit workpapers do not contain a "Buyer's Final Statement"
8 but do contain a finance agreement showing that "state tax" of \$2,790.81 was part of the amount
9 financed. By letter dated August 23, 2001, petitioner informed Mr. Gilman that the "sales tax" portion
10 of the amount financed had, mistakenly, not been refunded to him. The letter contained a brief
11 accounting showing that the total amount of tax financed was \$2,790.81, of which \$114.16 was tax on
12 the purchase of parts from petitioner, leaving \$2,676.65 to be refunded to Mr. Gilman. The letter also
13 informed Mr. Gilman that it was his responsibility to pay the tax to the Board. On August 27, 2001,
14 petitioner issued a check to Mr. Gilman for \$2,676.65. Based on the review of Board records by the
15 Sales and Use Tax Department (Department), neither purchaser has paid use tax on these transactions
16 directly to the Board.

17 Petitioner contends that it did not actually collect use tax on these transactions because the
18 funds were deposited into petitioner's trust account, not into petitioner's business account. Petitioner
19 argues that, because the money was in trust, petitioner did not have use of the money. Petitioner also
20 argues that the tax was refunded to the purchasers, and thus it became solely the purchasers'
21 responsibility to pay the applicable tax to the Board.

22 The Department concluded that, although a petitioner is not required to collect use tax on sales
23 of boats and yachts, since petitioner collected tax, it owes that tax to the Board. The Department
24 argues that later refunding the money to the purchaser does not alter the broker's liability.

25 When a person purchases a boat or yacht for use in California from a party who is not required
26 to hold a seller's permit by reason of the number, scope, and character of its sales in California, the
27 applicable tax is use tax, unless an exemption or exclusion applies. (Rev. & Tax. Code, § 6201; Cal.
28 Code Regs., tit.18, § 1610, subd. (c)(2).) When a person purchases a vessel through a broker, any

1 amount designated as sales or use tax collected by the broker from the purchaser constitutes a debt
2 owed by the broker to the state and the broker shall be liable to the Board for that amount. (Rev. &
3 Tax. Code, § 6202, subd. (c); Cal. Code Regs., tit. 18, § 1610, subd. (c)(2)(C).)

4 Here, petitioner collected the tax from the purchasers in these two transactions, even though it
5 was the broker in the transactions, thus, petitioner is liable for the tax collected as if it were a retailer
6 engaged in business in this state required to collect that amount as use tax. Therefore, the tax
7 petitioner collected from Mr. Laurin and Mr. Gilman constituted debts owed to the Board by petitioner.
8 (Rev. & Tax. Code, § 6202, subd. (c); Cal. Code Regs., tit. 18, § 1610, subd. (c)(2)(C).) Petitioner's
9 argument that it did not really collect the tax because it was deposited into its trust account is not
10 persuasive since petitioner did, in fact, collect the tax. That the amount designated as tax was
11 deposited into petitioner's trust account did not prevent petitioner from paying the tax to the Board
12 rather than refunding it to the purchasers. We understand that it is standard practice in brokerage sales
13 for the funds to pass through a trust account, much like the proceeds on a sale of real property passes
14 through an escrow account. One of the primary purposes of the use of a trust or escrow account in
15 such transactions is to ensure that all fees, including taxes where applicable, are paid prior to the funds
16 being distributed to the seller. Moreover, petitioner's suggestion that it had no control over the tax
17 collected once it was placed in the trust account clearly is not true since petitioner itself subsequently
18 refunded the tax collected to the purchasers.

19 Based on the foregoing, we find that petitioner is liable to the Board for the tax collected,
20 totaling \$2,676.65 in the transaction with Mr. Gilman and \$14,339.05 in the transaction with Mr.
21 Laurin.

22 AMNESTY

23 Petitioner submitted an application of amnesty, but did not pay the amnesty-eligible tax and
24 interest due by May 31, 2005, or enter into a qualifying installment payment agreement by that date.
25 Thus, an amnesty interest penalty of \$2,631.38 will apply when this matter is final pursuant to
26 Revenue and Taxation Code section 7074, subdivision (a).

27 Petitioner filed a request for relief of the penalty stating that it did not satisfy the requirements
28 of the amnesty program because it had a good faith belief that it would prevail in the appeals process.

1 The purpose of the amnesty program was to encourage taxpayers to pay their tax deficiencies,
2 *including* those subject to pending appeals. Petitioner’s belief that it would eventually prevail on
3 appeal does not establish good cause for petitioner’s failure to satisfy the requirements of the amnesty
4 program. We therefore find that there is no basis for relief of the amnesty interest penalty.

5 **RESOLVED ISSUES**

6 In our D&R, we concluded that an alleged brokered sale for \$16,000 was actually a nontaxable
7 commission and that disallowed exempt sales of \$63,000 to Mr. Doug Trehitt and \$323,977 to
8 Mr. Robert Hoffman were exempt sales in interstate commerce. The Department prepared a reaudit
9 dated July 22, 2008, which reflects these adjustments. The reaudit also indicates that the reaudit
10 findings were discussed with petitioner’s representative, and that petitioner no longer protests the
11 disallowed claimed exempt sale to Mr. Mike McLean and the difference between recorded and
12 reported taxable measure. Based on this concession, we recommend that no further adjustments are
13 warranted and that the claim for refund wherein petitioner alleges that it overstated its taxable sales on
14 its sales and use tax returns should be denied.

15 **OTHER DEVELOPMENTS**

16 None.

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19 Summary prepared by Rey Obligacion, Business Taxes Specialist III
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