

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:)
LIBORIO RODRIGUEZ,) Account Number: SR AS 97-634480
dba G. K. Motors) Case ID 401817
Petitioner) Los Angeles, Los Angeles County

Type of Business: Used car dealership

Audit Period: 1/1/03 - 6/15/06

<u>Item</u>	<u>Disputed Amount</u>		
Negligence penalty	\$23,275		
		<u>Tax</u>	<u>Penalty</u>
As determined	\$232,753.45		\$23,275.35
Concurred in	- 232,753.45		<u>0.00</u>
Protested	<u>\$ 0.00</u>		<u>\$23,275.35</u>
Proposed tax redetermination	\$232,753.45		
Interest through 4/30/09	100,755.06		
Penalty	<u>23,275.35</u>		
Total tax, interest, and penalty	<u>\$356,783.86</u>		
Monthly interest beginning 4/1/09	<u>\$1,551.69</u>		

UNRESOLVED ISSUE

Issue: Whether petitioner was negligent. We find that petitioner was negligent, and the negligence penalty was properly imposed.

The Sales and Use Tax Department (Department) performed an analysis of petitioner's federal income tax returns (FITR's) for the period January 2003 to December 2005, and found that petitioner had underreported a substantial amount of taxable sales. The Department noted that petitioner did not report his purchases on the FITR's. Therefore, the Department used petitioner's Report of Sales (ROS) Books issued by the Department of Motor Vehicles to establish audited taxable sales. Upon comparison of the audited taxable sales with the reported taxable sales to the Board, the Department found that petitioner had underreported his taxable sales by \$2,833,895, or by 74.85 percent. The

1 Department noted that the understatements occurred continuously throughout the audit period, and that
2 petitioner charged and collected sales tax reimbursement on his sales. Petitioner is not disputing any
3 portion of the understated taxable sales. The Department asserted the negligence penalty because
4 petitioner underreported a significant amount of taxable sales. Petitioner contends that he did not have
5 competent individuals preparing his tax returns, and that he has neither the time, energy, nor financial
6 resources to invest in a complex inventory accounting system. No additional information was
7 submitted in support of his contention.

8 We find that petitioner was negligent in reporting his sales because he failed to report 74.85
9 percent of his taxable sales. Such a substantial understatement generally signifies negligence by a
10 taxpayer. Here, petitioner failed to maintain adequate records and the Department had to use an
11 alternative method to determine petitioner's taxable sales. Such a failure to maintain adequate records
12 is itself evidence of negligence.

13 Although this is petitioner's first audit, we note that petitioner has demonstrated knowledge of
14 his sales and use tax reporting obligations. Petitioner had sufficient knowledge to calculate and charge
15 sales tax reimbursement on his sales by adding sales tax reimbursement to the selling price of each
16 vehicle. Petitioner's own ROS records provide him with actual knowledge of his taxable sales and the
17 corresponding amount of reimbursement that he collected, and failed to remit. Petitioner did not
18 provide an explanation for his failure to remit the sales tax reimbursement he collected to the Board,
19 which also suggests negligence.

20 Petitioner's contention that he did not have competent individuals preparing his tax returns is
21 not convincing. Field Audit Manual section 0506.20 provides that, in general, where an agent or
22 employee of the taxpayer is negligent, with a resulting tax deficiency, the 10 percent penalty will
23 apply. This is true even though the agent or employee acted without the taxpayer's knowledge. We
24 find that the negligence penalty has been properly imposed in this case.

25 OTHER DEVELOPMENTS

26 None.

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