

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 and Claim for Refund Under the Sales and Use)
 4 Tax Law of:)
 5)
 5 SWANILLON, INC.) Account Number: SR Y FHB 99-786517
 6 dba San Diego Erosion Control) Case ID's 422969, 432778
 6)
 7 Petitioner/Claimant) San Marco, San Diego County

8 Type of Business: Sales and installation of erosion control products

9 Audit Period: 10/01/03 – 9/30/06

10 Item Amount in Dispute

11 Accrued interest \$35,509¹

12 Tax

13 As determined \$161,609.15
 13 Interest through 6/30/08 35,509.37
 14 Total tax and interest \$197,118.52
 14 Payments -163,452.00
 15 Balance due \$33,666.52

16 **UNRESOLVED ISSUE**

17 **Issue:** Whether petitioner should be relieved of the interest that has accrued on the audit
 18 liability. We conclude that no relief is warranted.

19 Petitioner, a corporation, has operated the business known as “San Diego Erosion Control” in
 20 San Marcos since October 15, 1995. Petitioner primarily sells and installs products that protect land
 21 from washing away, such as blankets, sand bags, and fiber roll. The Department found that petitioner
 22 failed to report taxable sales of \$1,954,133, and petitioner agrees. However, petitioner requests relief
 23 of interest on the basis that petitioner could have sold the tangible personal property for lower sale
 24 prices (charging more for labor), resulting in less tax revenue for the State. In petitioner’s view, it did
 25 the State a favor because it sold property for more than it had to, resulting in more tax revenue for the
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27 ¹ This represents the total amount of interest that has accrued on the audit liability. Since the tax portion of the audit
 28 liability has been paid, no additional interest will accrue.

1 State. In other words, petitioner seeks equity relief from the interest because petitioner helped the
2 State generate extra tax revenue by selling property at higher than normal markups.

3 The Board may relieve all or any part of the interest imposed in a determination for which the
4 failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the
5 Board. (Rev. & Tax. Code, § 6593.5.) Petitioner's does not seek relief of interest because of any
6 alleged unreasonable error or delay by an employee of the Board. Rather, petitioner acknowledges that
7 the tax understatement is due to petitioner's own mistakes. The fact that petitioner could have sold
8 property for lower selling prices is not a basis for relief of interest. Thus, petitioner is not entitled to
9 relief of interest under section 6593.5.

10 **OTHER DEVELOPMENTS**

11 Petitioner filed a claim for refund arguing that the sampling/testing method used in the audit
12 resulted in excessive unreported taxable sales. However, at the appeals conference, petitioner concurs
13 with the tax liability as determined, and we therefore conclude that its claim for refund should be
14 denied.

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17 Summary prepared by Rey Obligacion, Business Taxes Specialist III
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