

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)4 A REALTY PUBLICATIONS, INC.,)
5 dba First Tuesday)Account Number: SR EH 23-697437
Case ID's 343231, 373181, 379332, 391653

6 Petitioner)

Riverside, Riverside County

7
8 Type of Business: Correspondence school9 Audit Periods: 7/1/01 – 12/31/04 (case ID 343231)
10 1/1/05 – 3/31/06 (case ID 373181)
11 4/1/06 – 6/30/06 (case ID 379332)
12 7/1/06 – 9/30/06 (case ID 391653)13 Item14 Disputed Amount15 Negligence penalties 7/1/01 – 12/31/04 \$11,571 (case ID 343231)
16 1/1/05 – 3/31/06 \$ 5,482 (case ID 373181)
17 4/1/06 – 6/30/06 \$ 1,430 (case ID 379332)
18 7/1/06 – 9/30/06 \$ 1,354 (case ID 391653)

19 Amnesty double-negligence penalty \$5,321 (case ID 343231)

20 Amnesty interest penalty \$6,071 (case ID 343231)

21 34323122 37318123 Tax24 Penalties25 Tax26 Penalty27 As determined \$290,165.09 \$40,053.91 \$223,324.00
28 Adjustment: Department \$22,332.40
29 Appeals Division -174,458.62 -23,162.70 -168,499.00 -16,849.90
30 Proposed redetermination \$115,706.47 \$16,891.21 \$ 54,825.00 \$ 5,482.50
31 Concurring in -115,706.47 - 54,825.00
32 Protested \$ 0.00 \$16,891.21 \$ 0.00 \$ 5,482.50
33 Proposed tax redetermination \$115,706.47 \$ 54,825.00
34 Interest (tax paid in full) 42,221.32 7,399.21
35 Negligence penalty 11,570.65 5,482.50
36 Double amnesty negligence penalty 5,320.56
37 Amnesty interest penalty 6,071.47
38 Total tax, interest, and penalties \$180,890.47 \$ 67,706.71
39 Payments -180,890.47 - 67,706.71
40 Balance due \$0.00 \$0.00

| | <u>Tax</u> | <u>379332</u> <u>Penalty</u> | <u>Tax</u> | <u>391653</u> <u>Penalty</u> |
|----|----------------------------------|---------------------------------|-------------------|---------------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | As determined | \$43,764.00 | \$42,830.00 | |
| 4 | Adjustment: Department | | | \$4,283.00 |
| 5 | Appeals Division | -29,461.00 | -29,285.00 | -2,928.50 |
| 6 | Proposed redetermination | \$14,303.00 | \$13,545.00 | \$1,354.50 |
| 7 | Concurred in | <u>-14,303.00</u> | <u>-13,545.00</u> | |
| 8 | Protested | <u>\$ 0.00</u> | <u>\$ 0.00</u> | <u>\$1,354.50</u> |
| 9 | Proposed tax redetermination | \$14,303.00 | \$13,545.00 | |
| 10 | Interest through various dates | 1,206.39 | 1,839.57 | |
| 11 | Penalty | <u>1,430.30</u> | <u>1,354.50</u> | |
| 12 | Total tax, interest, and penalty | \$16,939.69 | \$16,739.07 | |
| 13 | Payments | <u>-16,939.69</u> | <u>-16,739.07</u> | |
| 14 | Balance due | <u>\$0.00</u> | <u>\$0.00</u> | |

10 These matters were heard by the Board on April 29, 2009, but a decision could not be reached,
11 and thus the matter is returned to the Board for decision.

12 In our Decision and Recommendation, we recommended that a reaudit be conducted to
13 examine certain items which petitioner claimed would reduce its liabilities. In that reaudit, the Sales
14 and Use Tax Department (Department) found that adjustments were warranted, as reflected in the table
15 above. Petitioner no longer protests the remaining additional tax assessment, but still protests the
16 penalties.

17 **UNRESOLVED ISSUE**

18 **Issue:** Whether petitioner was negligent. We concluded that petitioner was.

19 The Department imposed the negligence penalties because the errors found in the audit were
20 the same errors found in the prior audit. In the prior audit, petitioner was assessed for its failure to
21 report tax on its sale of correspondence courses billed on a lump-sum basis. The Department found
22 that, although petitioner was specifically notified in the prior audit that its sale of real estate courses is
23 subject to tax, it continued to report in the same erroneous manner.

24 Petitioner argues that it prepared its sales and use tax returns in a manner consistent with its
25 accountant's advice and therefore acted reasonably by relying on advice from a qualified professional.
26 In addition, petitioner contends that there was no "resolution" to the prior audit until 2004, when
27 petitioner settled the prior assessment with the Board. As a result, petitioner argues no penalties
28 should be imposed. Additionally, petitioner contends that a good faith difference existed between

