

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 ELUFA CORPORATION) Account Number: SR AA 97-820457
 6 Petitioner) Case ID 350440
 7 _____) Monterey Park, Los Angeles County

8 Type of Business: Commercial printer

9 Audit period: 10/01/01 – 09/30/04

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
11 Disallowed claimed sales for resale	\$19,351		
12 Interest (as of 9/30/09)	\$8,653		
13 Amnesty interest penalty	\$417		
14 As determined:	\$17,078.05		\$2,160.16
15 Adjustment - Appeals Division	<u>- 1,374.77</u>		<u>-2,160.16</u>
16 Proposed redetermination	\$15,703.28		<u>00.00</u>
17 Less concurred	<u>-14,106.82</u>		
18 Balance, protested	<u>\$ 1,596.46</u>		
19 Proposed tax redetermination	\$15,703.28		
20 Interest through 11/30/09	<u>8,862.16</u>		
21 Total tax and interest	\$24,565.44		
22 Payments	<u>- 16.50</u>		
23 Balance Due	<u>\$24,548.94</u>		
24 Monthly interest beginning 12/01/09	<u>\$ 104.58</u>		

22 This matter was heard by the Board on September 23, 2009, but the Board did not reach a
 23 decision. Thus, the matter is returned for decision.

24 UNRESOLVED ISSUES

25 **Issue 1:** Whether further adjustments are warranted to the amount of disallowed claimed sales
 26 for resale. We recommend no further adjustment.

27 Petitioner operates a printing shop. During the audit, the Sales and Use Tax Department
 28 (Department) examined all of the sales invoices petitioner issued during the audit period and concluded

1 that some of the claimed nontaxable sales for resale represented taxable sales. Petitioner disputed the
2 Department's conclusion with respect to its claimed sales for resale to four customers.

3 The Department disallowed \$10,554 in claimed sales for resale to American Latex Corp.,
4 which is 50 percent of petitioner's sales totaling \$21,108 made per invoices dated January 7, 2002, and
5 March 13, 2003. The Department also disallowed \$12,415 in claimed sales for resale to Line One
6 Laboratories (which is related to American Latex and uses similar catalogs), which is 50 percent of
7 petitioner's sales totaling \$24,830 made per invoices dated April 2, 2003, and October 27, 2003.
8 During the audit, petitioner provided incomplete resale certificates dated January 5, 2001 (they do not
9 describe the property to be purchased for resale) and, for Line One Laboratories, a completed resale
10 certificate dated December 9, 2004, that is well after the subject sales. Both purchasers completed
11 XYZ letters stating that the catalogs were purchases "for resales that go along with the products."

12 The Department did not accept the documents petitioner submitted as showing the sales were
13 for resale, but after contacting each purchaser, obtained information sufficient to convince it that the
14 purchasers resold a portion of the catalogs they purchased. The Department allowed 50 percent of the
15 sales as resales and disallowed the remaining 50 percent. Petitioner asserts that these two purchasers
16 resold all the catalogs, and to the extent that they did gift any of the catalogs, the two purchasers
17 should be responsible for the tax because petitioner had no control over whether they sold or gave
18 away the catalogs. We conclude that, as the retailer, petitioner is liable for any sales tax due on the
19 retailer sales, but we also found in the D&R that, based on the facts, the allowance for resales should
20 be increased to 75 percent of the sales to these two customers. Accordingly, we recommend that the
21 measure of deficiency for these sales be reduced by \$11,484, leaving disallowed claimed resales to
22 these two customers of \$11,484. We recommend no further adjustments.

23 After reaudit adjustments, there remains \$3,248 in disallowed claimed sales for resale of dies,
24 plates, film and similar items used by petitioner to make printed matter for sale to Carrand Company,
25 Inc., the last invoice for which was issued on February 23, 2004. Petitioner supported its assertion that
26 these sales were for resale with an untimely and incomplete resale certificate (does not describe the
27 property to be purchased for resale) dated December 10, 2004, and an XYZ letter response indicating
28 that the purchases were for resale. However, based on statements made by Carrand indicating that

1 certain items were not resold, the Department did not accept the XYZ letter response and instead
2 included the sales in the taxable measure due.

3 Petitioner contends that its sale of these items to Carrand was not taxable because the items
4 sold “go to the product.” However, the dies, plates, film, and similar items were “special printing aids”
5 which petitioner physically used as manufacturing aids in the printing process. (Cal. Code Regs.,
6 tit. 18, § 1541, subd. (a)(12).) Since there is no evidence that petitioner explicitly retained title to the
7 special printing aids, under the special rules adopted by regulation, it is irrebuttably presumed that it
8 resold them to Carrand prior to use. (Cal. Code Regs., tit. 18, § 1541, subd. (c)(1)(B) (this generally
9 avoids the possibility of the printer’s owing use tax on the cost and also owing sales tax on the full
10 sales price of the printed matter, including the cost of the special printing aids built into that sales
11 price).) Thus, tax will apply only to the sales price of the special printing aids, and that tax is sales tax
12 owed by petitioner unless it can establish that it sold those special printing aids for resale by Carrand
13 *before* petitioner used the items in the printing process. Under the specific regulatory rules adopted by
14 the Board to eliminate any confusion about the application of tax in these circumstances:

15 “A printer will not be regarded as selling special printing aids for resale unless: 1) the
16 printer separately states the sale price of the special printing aids in an amount not less
17 than the sale price of the special printing aids, or their components, to the printer; and 2)
18 the printer accepts a timely and valid resale certificate in good faith from the printer’s
19 customer stating that the special printing aids are purchased for resale.... Otherwise, the
20 printer will be regarded as selling the special printing aids at retail, and will owe tax on
21 that retail sale accordingly.” (Cal. Code Regs., tit. 18, § (c)(2)(B).)

22 Petitioner did not take a timely and valid resale certificate, let alone one that stated the special
23 printing aids were purchased for resale. Accordingly, petitioner’s sale of the special printing aids to
24 Carrand was a retail sale for which it is liable for sales tax. We recommend no adjustment.

25 Finally, petitioner disputes the disallowed claimed resales of \$4,618 which petitioner billed to
26 Tatung Company on several invoices issued from May 12, 2003, through June 22, 2004. In support of
27 its contention that these sales were for resale, petitioner provided an untimely resale certificate dated
28 November 30, 2004, which describes the property to be purchased for resale as “printing materials for
refurbished items labels, for refurbished items (Plant C),” and an XYZ letter response from Tatung
stating that it purchased the subject property for resale and resold it. The Department did not accept

1 the sales as for resale. Petitioner asserts that the sales should be allowed as resales because Tatung
2 used the shipping labels to ship repaired or refurbished items to consumers, and Tatung includes the
3 repair feedback forms in the containers for repaired or refurbished items that are shipped to consumers.
4 That is, the labels were shipping labels used by Tatung. As such, petitioner's sales of the labels to
5 Tatung were taxable retail sales. (Cal. Code Regs., tit. 18, § 1589, subd. (c)(1).) Similarly, the forms
6 were also consumed by Tatung, to obtain feedback from its customers, and as such petitioner's sales of
7 the forms were also taxable retail sales. We recommend no adjustment.

8 **Issue 2:** Whether interest should be relieved. We recommend relief be denied.

9 Petitioner submitted a request for relief of interest pursuant to Revenue and Taxation Code
10 section 6593.5, signed under penalty of perjury, asserting that there were unreasonable delays "due to
11 the debatable and questionable items and transactions in the process of the audit." The Board may
12 relieve interest where the failure of the taxpayer to pay tax is due in whole or in part to an unreasonable
13 error or delay by a Board employee acting in his or her official capacity, provided no significant aspect
14 of the error or delay is attributable to an act of, or failure to act by, the taxpayer. (Rev. & Tax. Code, §
15 6593.5; Cal. Code Regs., tit. 18, § 1703, subd. (b)(1)(E).) We find that the Department acted promptly
16 at each step in the audit process, and that all, or almost all, delays were attributable to petitioner's
17 requests for additional time to review the audit workpapers and provide supporting documentation.
18 We find further that there has been no unreasonable delays in the appeals process. Accordingly, we
19 conclude there is no basis for relief of interest.

20 AMNESTY

21 The amnesty interest penalty will be applicable when the liability becomes final because
22 petitioner did not apply for amnesty. (Rev. & Tax. Code, § 7074, subd. (a).) Petitioner has requested
23 relief from the amnesty interest penalty, pursuant to Revenue and Taxation Code section 6592, on the
24 grounds that: (1) the Department did not inform petitioner of the amnesty program while it was
25 performing the audit; (2) petitioner had no basis for requesting amnesty prior to the March 31, 2005,
26 deadline because the Department's audit was not complete at that time; and (3) when petitioner asked
27 the Department about the amnesty program, the Department stated the deadline for applying for
28 amnesty had passed.

