

**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: )  
AFTERSHOCK POWER BOATS, INC. ) Account Number: SR EH 100-235371  
) Case ID 334423  
Petitioner ) Murrieta, Riverside County

Type of Business: Boat sales  
Audit period: 07/01/00 – 06/30/03

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported sales	\$2,170,034		
Negligence penalty	\$ 16,993		
Amnesty-double negligence penalty	\$ 10,519		
Amnesty interest penalty	\$ 11,649		
As determined:		\$216,764.56	\$35,350.67
Adjustment - Sales and Use Tax Department		- 46,836.91	- 7,839.15
Proposed redetermination, protested		<u>\$169,927.65</u>	<u>\$27,511.52</u>
Proposed tax redetermination		\$169,927.65	
Interest through 6/30/10		114,776.44	
10% penalty for negligence		16,992.80	
Amnesty-double negligence penalty		10,518.72	
Amnesty interest penalty		<u>11,649.41</u>	
Total tax, interest, and penalty		\$323,865.02	
Payments		- 430.49	
Balance Due		<u>\$323,434.53</u>	
Monthly interest beginning 7/1/10		<u>\$ 988.73</u>	

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments are warranted to the audited amount of unreported sales. We recommend no adjustments.

Petitioner operated as a retailer of boats, trailers, and related accessories from February 1, 2000, through March 31, 2008, when the business was discontinued with no known successor. Petitioner did not provide a sales journal or worksheets showing how the amounts reported on the sales and use tax returns were determined. The Sales and Use Tax Department (Department) decided to schedule

1 petitioner's sales of boats and trailers from its customer files. Petitioner provided documentation that  
2 some of the scheduled sales were nontaxable sales for resale or exempt sales in interstate commerce.  
3 The Department regarded the remaining sales as taxable sales. The selling prices were included in  
4 some customer files, but not in others. When a selling price could not be obtained from the customer  
5 file, the Department used an average selling price.<sup>1</sup> In total, the Department compiled taxable sales of  
6 boats and trailers of \$4,182,786, of which \$2,737,959 was based on selling prices obtained from the  
7 customer files, and \$1,444,827 was based on estimated average selling prices. The Department then  
8 calculated audited sales of parts, using the second quarter of 2003 (2Q03) as the test period. Based on  
9 the numerical sequence of the invoices, the Department concluded that there were six missing invoices.  
10 It scheduled the available sales invoices and calculated the average sale price of parts per invoice,  
11 which the Department used for the six missing invoices. The Department computed that audited sales  
12 of parts for 2Q03 represented 2.8 percent of audited boat and trailer sales for that quarter. To establish  
13 audited sales of parts for the audit period, the Department applied 2.8 percent to audited amounts of  
14 boat and trailer sales. The Department computed audited taxable sales, including boats, trailers, and  
15 parts, of \$4,299,903, which it compared to reported taxable sales of \$2,129,869, to compute the  
16 understatement of \$2,170,034.

17 Petitioner contends that adjustments are warranted for duplicated sales and sales for which the  
18 purchaser reported tax to the California Department of Motor Vehicles (DMV). Petitioner does not  
19 contend that any of the sales scheduled as taxable were in fact nontaxable or exempt.

20 The Department used petitioner's own records (the customer files) to compile audited taxable  
21 sales. Petitioner has not identified any sales that were duplicated in the audit, and we have not found  
22 any in our review of the audit workpapers. Similarly, petitioner has not provided documentation that  
23 any of its customers paid tax directly to DMV. Further, since petitioner was a dealer of boats and  
24 trailers, purchasers would expect petitioner to submit the necessary paperwork to DMV.

25 Consequently, we find it highly unlikely that any of petitioner's customers paid tax to DMV. In the  
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27 <sup>1</sup> The Department computed average selling prices for various categories of boats and trailers and then used the average  
28 appropriate to the type of sale.

1 absence of evidence of duplications or tax paid by customers to DMV, we find that there is no basis for  
2 adjustment.

3 **Issue 2:** Whether petitioner was negligent. We conclude that it was.

4 The Department imposed the 10-percent negligence penalty because petitioner's records were  
5 inadequate for sales and use tax purposes, and the understatement was large in relation to the reported  
6 measure of tax. Petitioner disputes the penalty on the grounds that it did the best it could to report  
7 accurately.

8 Petitioner did not provide a sales journal or worksheets showing how the amounts reported on  
9 the sales and use tax returns were determined. Further, for a substantial number of its sales of boats  
10 and trailers, petitioner did not maintain information regarding the amounts of the sales. Moreover, the  
11 understatement of \$2,170,034, which represents a percentage of error of 101.9 percent, is substantial,  
12 both as an absolute value and in relation to reported amounts. We find that the lack of books and  
13 records and the fact that petitioner reported only about half of its taxable sales are evidence that  
14 petitioner did not exercise due care in recordkeeping or reporting. Thus, we find petitioner was  
15 negligent, and the penalty was properly applied.

#### 16 AMNESTY

17 Petitioner did not apply for amnesty or pay the tax and interest due for the amnesty-eligible  
18 period by March 31, 2005. Therefore, since the Notice of Determination was issued after the end of  
19 the amnesty period, an amnesty-double negligence penalty of \$10,518.72 has been applied with respect  
20 to the negligence penalty imposed for the amnesty-eligible period. In addition, an amnesty interest  
21 penalty of \$11,649.41 will be applied when the liability becomes final. Petitioner submitted a  
22 statement under penalty of perjury pursuant to Revenue and Taxation Code section 6592, requesting  
23 relief from the amnesty penalties on the grounds that it will have trouble paying the audit liability.

24 The Department's records show that a letter explaining the amnesty program was sent to  
25 petitioner on January 20, 2005. Also, the Department first informed petitioner of the audit by letter  
26 dated September 10, 2003. Due to difficulties in obtaining documentation from petitioner, the audit  
27 was not completed until January 27, 2006. However, preliminary audit schedules were faxed to  
28 petitioner on August 27, 2004. Thus, petitioner was aware of a substantial understatement of tax for

1 the amnesty-eligible periods but did not file for amnesty or pay any amount of additional tax for those  
2 periods during the amnesty period. We note that petitioner continued in business, and thus continued  
3 making sales, three years after the amnesty deadline of March 31, 2005. Therefore, we are not  
4 convinced that petitioner lacked the funds to comply with the amnesty program. Moreover, an  
5 inability to pay does not provide reasonable cause for petitioner's failure to participate in the amnesty  
6 program. Consequently, we find no basis to recommend relief of the amnesty penalties.

7 **OTHER DEVELOPMENTS**

8 None.

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11 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III  
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