

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination)
Under the Sales and Use Tax Law of:)
JUAN B. GARIBO, dba The Little House of Nude) Account Number: SR AS 100-964721
Furniture) Case ID 513023
Petitioner) Los Angeles, Los Angeles County

Type of Business: Retailer and wholesaler of custom furniture

Audit period: 10/01/02 – 06/30/07

<u>Item</u>	<u>Disputed Amount</u>
Disallowed netted sales for resale	\$449,844
Penalty	\$ 18,556
Tax determined and protested	\$37,112.16
Interest through 10/31/11	19,380.70
Penalty for knowingly operating without a permit	<u>18,556.11</u>
Total tax, interest, and penalty	\$75,048.97
Payments	<u>-3,000.00</u>
Balance Due	<u>\$72,048.97</u>
Monthly interest beginning 11/01/11	<u>\$170.56</u>

UNRESOLVED ISSUES

Issue 1: Whether any adjustments are warranted to the audited measure. We find that no adjustments are warranted.

Petitioner operated a furniture business, The Little House of Nude Furniture, without a seller’s permit from October 10, 2002, until August 22, 2007, at which time the Sales and Use Tax Department (Department) discovered petitioner was operating without a permit, permitized him, and allowed him to file delinquent returns. On those returns, petitioner reported total sales of \$250,205, without claiming any deductions, resulting in reported taxable sales of \$250,205. However, petitioner had recorded \$907,321 as sales for resale that were netted from total sales (i.e., the recorded sales for resale were not included in petitioner’s delinquent tax returns). For audit, petitioner provided sales and use

1 tax return worksheets, federal income tax returns, bank statements, customer files, incomplete sales
2 invoices and purchase orders, and business cards. Petitioner did not provide any resale certificates.

3 The Department examined recorded sales for resale on an actual basis, and determined that
4 petitioner had insufficient evidence to support \$449,844 in recorded sales for resale. Petitioner asserts
5 that all of the disallowed netted sales for resale were, in fact, nontaxable sales for resale to furniture
6 showrooms, interior designers, and architects. However, petitioner did not provide resale certificates
7 for any of the recorded sales for resale, and failed to produce any evidence to show that his purchasers
8 resold the purchased property, are still holding the property for resale, or have paid tax directly to the
9 Board. We find that there is no basis for adjustment.

10 **Issue 2:** Whether the Department has met its burden of establishing that petitioner knowingly
11 operated without a seller's permit for the purpose of evading taxes.¹ We find that it has done so.

12 The Department imposed the penalty pursuant to Revenue and Taxation Code section 7155
13 because: 1) the taxpayer did not obtain a seller's permit prior to the date the first return was due; (2)
14 the taxpayer, while operating without a permit, knew a permit was required; and (3) the average
15 measure of tax liability during the period that the taxpayer operated without a permit was more than
16 \$1,000 per month. Petitioner has no specific contentions, but does not concede the penalty. Since the
17 penalty is a fraud penalty, the Department must establish that the penalty has been properly imposed
18 by clear and convincing evidence.

19 Petitioner operated this business without a seller's permit for the entire audit period, and was
20 not issued a seller's permit and did not file returns until after the period for which the penalty has been
21 imposed ended, long after the first return was due. This was not petitioner's first business of this type.
22 Petitioner had a prior furniture business which held a seller's permit for the period October 1, 1984,
23 through June 30, 1995, showing that petitioner knew he needed a seller's permit for this business.
24 However, despite not having a seller's permit and not filing returns and paying sales tax, petitioner's
25 sales invoices included the applicable sales tax reimbursement. Further, at conference, petitioner

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27 ¹ This penalty is a fraud penalty. However, without regard to whether the penalty is upheld, the determination is timely for
28 the entire period under the eight-year statute of limitations applicable when, as here, a taxpayer fails to file returns. (Rev. &
Tax. Code, § 6487, subd. (a).)

1 acknowledged that he operated without a permit during the period in question and the he knew he
2 should have had one. Finally, the average measure of tax liability during the period petitioner operated
3 without a permit exceeded \$1,000 a month. We find that the Department has provided clear and
4 convincing evidence that petitioner failed to obtain a seller's permit for the purpose of evading the
5 payment of taxes and that the 50-percent penalty was correctly applied.

6 **OTHER DEVELOPMENTS**

7 None.

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10 Summary prepared by Thea C. Etheridge, Business Taxes Specialist II
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