

**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: )  
GRANITE BUSINESS SOLUTIONS, INC. ) Account Number: SR KH 97-966718  
Taxpayer ) Case ID 492239  
Rocklin, Placer County

Type of Business: Retailer of networking equipment

Audit period: 07/01/05 – 06/30/08

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Disallowed claimed exempt sales	\$139,482 <sup>1</sup>		
As determined:		\$12,093.56	\$ - 6.60 <sup>2</sup>
Finality penalty added			\$1,202.56
Adjustment - Appeals Division		- 813.14	-1,202.56
Proposed redetermination		\$11,280.42	\$ - 6.60
Less concurred		- 362.72	- 6.60
Balance, protested		<u>\$10,917.70</u>	<u>\$ 00.00</u>
Proposed tax redetermination		\$11,280.42	
Interest through 2/28/11		4,572.90	
Overpayment of penalty for late return		- 6.60	
Total tax, interest, and penalty		\$15,846.72	
Payments		- 67.99	
Balance Due		<u>\$15,778.73</u>	
Monthly interest beginning 3/1/11		<u>\$ 65.41</u>	

**UNRESOLVED ISSUE**

**Issue:** Whether adjustments are warranted to the disallowed claimed exempt sales to Indian casinos. We recommend no further adjustments.

<sup>1</sup> The sales at issue total \$139,482. Of that amount, \$103,036 is subject to three separate district taxes (transactions and use taxes) assessed in Fresno County.

<sup>2</sup> The audit established an overpayment of a penalty paid with the return for the third quarter 2006.

1 Taxpayer is a retailer of networking equipment and related software. The Sales and Use Tax  
2 Department (Department) reviewed taxpayer's claimed nontaxable and exempt sales for the period  
3 July 1, 2005, through February 28, 2007, and found that the majority of the claimed amounts  
4 represented valid nontaxable and exempt sales. However, the Department questioned claimed exempt  
5 sales of equipment to Table Mountain Casino and Thunder Valley Casino, which taxpayer had  
6 considered to be exempt sales to Indians on a reservation.<sup>3</sup> Since the invoices issued to these two  
7 customers included freight charges, the Department concluded that the equipment had been drop-  
8 shipped to the casinos by taxpayer's suppliers or had been shipped by common carrier. Further, the  
9 Department noted that there was no express statement of delivery terms, such as "FOB Reservation."  
10 Accordingly, the Department concluded that title to the property did not transfer on the reservation and  
11 that the sales were not exempt from sales tax.

12 Taxpayer contends that the sales at issue were valid exempt sales. At the conference, taxpayer  
13 stated it may have used its own delivery trucks to deliver the equipment at issue and indicated it might  
14 have additional evidence that the equipment was shipped FOB destination. However, taxpayer has  
15 provided no additional documentation.

16 Sales tax does not apply to sales of tangible personal property made to Indians where the sales  
17 are negotiated at a place of business located outside of an Indian reservation if the property is delivered  
18 to the Indian purchaser, and ownership to the property transfers, on the reservation. (Cal. Code Regs.,  
19 tit. 18, § 1616, subd. (d)(4)(A).) The invoices for the disputed sales include freight charges but do not  
20 specify whether the delivery occurred via common carrier or via taxpayer's delivery trucks. Further,  
21 the invoices do not include an express statement that the equipment was shipped FOB destination.  
22 Accordingly, we find taxpayer has not provided sufficient evidence to establish that title transferred on  
23 the Indian reservation and has therefore not met its burden of proving that the gross receipts from the  
24 sales at issue are not subject to tax.

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26  
27 <sup>3</sup> The Department reviewed sales to these two customers for the remainder of the audit period and questioned no claimed  
28 exempt sales outside the test period.

**RESOLVED ISSUE**

We have recommended conditional relief of the finality penalty. A finality penalty was applied because taxpayer did not timely pay the liability or file a petition for redetermination. Taxpayer has filed a Request for Relief of the finality penalty on the basis that it had not had an opportunity to discuss the audit findings with the Department before the determination was issued. At the appeals conference, the Department recommended relief of the finality penalty because the Department had prematurely issued the determination. We find that taxpayer's good-faith belief that the discussion of audit findings would occur prior to the issuance of a notice of a determination constitutes reasonable cause for failing to timely pay or petition the determination. Accordingly, we recommend relief of the finality penalty, conditioned on taxpayer's payment of the tax within 30 days from the mailing of the notice of final decision.

**OTHER DEVELOPMENTS**

None.

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