

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:)

A REALTY PUBLICATIONS, INC.,)
dba First Tuesday)

Petitioner)

Account Number: SR EH 23-697437
Case ID's 343231, 373181, 379332, 391653

Riverside, Riverside County

Type of Business: Correspondence school

Audit Periods: 7/1/01 – 12/31/04 (case ID 343231)
1/1/05 – 3/31/06 (case ID 373181)
4/1/06 – 6/30/06 (case ID 379332)
7/1/06 – 9/30/06 (case ID 391653)

<u>Item</u>	<u>Disputed Amount</u>
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Negligence penalties	7/1/01 – 12/31/04	\$11,571 (case ID 343231)
	1/1/05 – 3/31/06	\$ 5,482 (case ID 373181)
	4/1/06 – 6/30/06	\$ 1,430 (case ID 379332)
	7/1/06 – 9/30/06	\$ 1,354 (case ID 391653)

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

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

	<u>343231</u>		<u>373181</u>	
	<u>Tax</u>	<u>Penalties</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$290,165.09	\$40,053.91	\$223,324.00	
Adjustment: Department				\$22,332.40
Appeals Division	-174,458.62	-23,162.70	-168,499.00	-16,849.90
Proposed redetermination	\$115,706.47	\$16,891.21	\$ 54,825.00	\$ 5,482.50
Concurred in	-115,706.47		- 54,825.00	
Protested	<u>\$ 0.00</u>	<u>\$16,891.21</u>	<u>\$ 0.00</u>	<u>\$ 5,482.50</u>
Proposed tax redetermination	\$115,706.47		\$ 54,825.00	
Interest (tax paid in full)	42,221.32		7,399.21	
Negligence penalty	11,570.65		5,482.50	
Double amnesty negligence penalty	5,320.56			
Amnesty interest penalty	<u>6,071.47</u>			
Total tax, interest, and penalties	\$180,890.47		\$ 67,706.71	
Payments	-119,095.49		- 67,706.71	
Balance due	<u>\$ 61,794.98</u>		<u>\$ 0.00</u>	

	<u>379332</u>		<u>391653</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
1 As determined	\$43,764.00		\$42,830.00	
2 Adjustment: Department		\$4,376.40		\$4,283.00
3 Appeals Division	<u>-29,461.00</u>	<u>-2,946.10</u>	<u>-29,285.00</u>	<u>-2,928.50</u>
4 Proposed redetermination	\$14,303.00	\$1,430.30	\$13,545.00	\$1,354.50
5 Concurred in	<u>-14,303.00</u>		<u>-13,545.00</u>	
6 Protested	<u>\$ 0.00</u>	<u>\$1,430.30</u>	<u>\$ 0.00</u>	<u>\$1,354.50</u>
7 Proposed tax redetermination	\$14,303.00		\$13,545.00	
8 Interest through various dates	1,206.39		1,839.57	
9 Penalty	<u>1,430.30</u>		<u>1,354.50</u>	
10 Total tax, interest, and penalty	\$16,939.69		\$16,739.07	
11 Payments	<u>-16,939.69</u>		<u>-13,023.81</u>	
12 Balance due	<u>\$ 0.00</u>		<u>\$ 3,715.26</u>	
13 Monthly interest beginning 5/1/09			<u>\$3.47</u>	

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

UNRESOLVED ISSUE

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

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

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

