

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Claim for Refund Under )  
 4 the Sales and Use Tax Law of: )  
 5 SHAHROKH MATIN, ) Account Number: SR CH 21-783691  
 6 dba European Auto Center ) Case ID 379882  
 7 Claimant ) El Cerrito, Contra Costa County

8 Type of Business: Use car dealer

9 Claim Period: 10/1/04 – 12/31/05<sup>1</sup>

10 <u>Item</u>	<u>Disputed Amount</u>
11 Refund of levied money	\$5,201.86

## 12 UNRESOLVED ISSUE

13 **Issue:** Whether claimant has made duplicate payments of the same tax liabilities. We  
 14 conclude that he has not.

15 Claimant operates a used car dealership. As of March 2006, claimant had final liabilities for  
 16 tax, penalty, and interest to the Board incurred for various items during the period October 1, 2004,  
 17 through December 31, 2005. On March 7, 2006, claimant made a \$3,000 payment on his account.  
 18 Thereafter, the Department sent claimant a Statement of Liability Balances (SLB), stating that “This  
 19 statement reflects only those liabilities detailed below. It is not intended to represent all liabilities you  
 20 may owe the Board.” The SLB showed that the \$3,000 payment was applied to three individual tax  
 21 liabilities, fully paying the tax balance on two liabilities (but not the interest or penalties), and partially  
 22 paying the tax liability on the third. The SLB also showed a remaining balance of \$1,841.08 in tax,  
 23 interest, and penalties for the three stated liabilities. On April 3, 2006, claimant made a payment of  
 24 \$1,841.08 on his account.

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 27 <sup>1</sup> The amounts at issue were applied to liabilities incurred for the period November 1, 2004, through December 31, 2005.  
 28 However, claimant argues that the amounts were duplicative of payments that were applied to liabilities for the period  
 October 1, 2004, through December 31, 2005, and seeks a refund on that basis. Accordingly, we show October 1, 2004, as  
 the beginning of the claim period, rather than November 1, 2004.

1 On April 25, 2006, the Department sent claimant a Demand for Immediate Payment (DIP) for a  
2 past due amount of \$5,174.96 in tax, interest, and penalties incurred between November 1, 2004, and  
3 December 31, 2005, and thereafter recorded a notice of tax lien for this liability. Claimant did not pay  
4 the past due amount, and the Department thus initiated a bank levy and collected \$5,201.86 from  
5 claimant's bank account effective August 30, 2006. Claimant contends that the liabilities in the DIP  
6 were the same taxes and penalties that had already been paid by the \$3,000 and \$1,841.08 payments  
7 made on March 7 and April 3, 2006, respectively. Claimant also contends that the Department made a  
8 mistake in recording a lien on his property evidenced by the Department's release of the lien when  
9 claimant complained. Therefore, claimant requests a refund of the amount taken from his bank  
10 account.

11 The Department issued the SLB to claimant to show how the \$3,000 payment was applied to  
12 the liabilities. The SLB did *not* purport to be an accounting of *all* of claimant's liabilities, but just the  
13 liabilities affected by the \$3,000 payment. In fact, the SLB *explicitly* informed claimant that the SLB  
14 "is not intended to represent all liabilities you may owe the Board." When claimant made the  
15 \$1,841.08 payment, he directed that it be applied to the balances on the SLB. Therefore, with that  
16 payment, all three of those liabilities were fully satisfied. However, these payments did not affect  
17 *other* tax liabilities that he owed (and for which he had previously received notices and demands).

18 The DIP reflected *all* liabilities remaining due at that time. We note that none of the three  
19 liabilities that were paid in full by the earlier \$3,000 and \$1,841.08 payments is included in the list of  
20 outstanding liabilities in the DIP. They were different liabilities. Thus, the satisfaction of those  
21 liabilities in full by means of the bank levy did not result in the double payment of the same tax  
22 liabilities. When the levy satisfied all of claimant's tax liabilities that were final at that time, the  
23 Department released the lien. That release did not indicate that there had been any mistake in  
24 recording the lien, just that there were no longer any liabilities owing to support a tax lien. Since there  
25 was no duplication and the amounts in question properly due, we recommend that the claim for refund  
26 be denied.

**OTHER DEVELOPMENTS**

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2           On June 25, 2007, the Department notified claimant that it had relieved several late payment  
3 penalties. These relieved penalties, which totaled \$2,749.50, had been satisfied by the bank levy in  
4 dispute here. After relieving the penalties, the Department applied the resulting credit amount of  
5 \$2,749.50 to deficiencies incurred by claimant for other periods not covered by this dispute. Thus,  
6 claimant has already received credit for \$2,749.50 of the \$5,201.86 in dispute, which means that, even  
7 if claimant were to establish that the levy was used to pay amounts he had already paid prior to the  
8 levy (which we conclude was not the case), only \$2,452.36 of the disputed amount has been retained  
9 by the Department and is eligible for refund or offset (\$5,201.86 - \$2,749.50).

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12 Summary prepared by John K. Chan, Business Taxes Specialist I  
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