

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matters of the Petition for Redetermination)
 4 and Claim for Refund Under the Sales and Use)
 Tax Law of:)
 5 **H&O, INC,**) Account Number SR GH 100-683147
 6 dba Kassa's Gas & Mart) Case ID 559975
 7 Petitioner) San Jose, Santa Clara County

8 Type of Business: Two gas stations with mini-marts

9 Liability period: 06/01/07 – 06/30/07

10 <u>Item</u>	<u>Disputed Tax Amount</u>
11 Unpaid tax based on an amended return	\$3,058
12 Tax as determined	\$11,996.00
13 Post-D&R adjustments:	
Adjustment to taxable measure	- 4,534.00
Tax credit from May 2007 applied as an offset	- 1,404.00
14 Proposed tax redetermination	\$ 6,058.00 ¹
15 Less concurred	- 3,000.00
16 Protested tax	<u>\$ 3,058.00</u>
Proposed tax redetermination	\$ 6,058.00
17 Interest through 07/31/14	<u>2307.09</u>
Total tax and interest	\$ 8,365.09
18 Less payments	- 2,060.94 ²
19 Balance Due	<u>\$ 6,304.15</u>
20 Monthly interest beginning 08/01/14	<u>\$ 19.99</u>

21 This matter was scheduled for Board hearing in September 2013, but petitioner did not respond
 22 to the Notice of Hearing and it was scheduled for decision on the nonappearance calendar. Pursuant to
 23 _____

24 ¹ In the D&R, we recommended that the tax be reduced to \$4,247.00. Our recommendation included reductions based on
 25 adjustments to the taxable measure and application of a tax credit as an offset, as shown above, and also included a
 26 reduction of \$1,812.00 based on application of a payment in that amount. However, in completing our recommended
 adjustments, the Sales and Use Tax Department reduced the tax to \$6,058.00, and then applied the payment of \$1,812.00 to
 the tax liability together with petitioner's other payments.

27 ² On April 30, 2008, petitioner made a payment of \$17,289.00. Initially, a portion of that remittance, \$1,812.00, was
 applied to the liability at issue in this case, and the balance was applied to petitioner's other liabilities. After the D&R was
 issued, the portion of that remittance applied to this liability was increased to \$1,961.49. The other payment applied to this
 28 liability in the amount of \$99.45 was made on January 29, 2013.

1 a request by petitioner's new representative, the matter was rescheduled for Board hearing in
2 November 2013, but the matter was postponed at petitioner's representative's request for additional
3 time to prepare. It was rescheduled for Board hearing in April 2014, but was postponed at petitioner's
4 request for additional time to prepare.

5 UNRESOLVED ISSUES

6 **Issue 1:** Whether any additional adjustments to the unpaid tax liability are warranted. We
7 conclude that no further adjustments are warranted.

8 Petitioner operated two gas stations with mini marts from January 2006 through February 2008,
9 when petitioner closed one of the locations. In June 2012, petitioner closed the other location. In its
10 original return filed for June 2007, petitioner reported taxable sales of \$776,241 and tax of \$64,038.
11 However, on that return, petitioner erroneously claimed a tax credit of \$66,280 for sales tax prepaid to
12 fuel suppliers, which resulted in a tax credit of -\$2,242.00 (\$64,038 - \$66,280). Petitioner later
13 realized that, since it had paid sales tax on all of its fuel purchases in June 2007, instead of prepaid
14 sales tax, it should have claimed a deduction for the cost of tax-paid purchases resold prior to use
15 instead of claiming a credit for prepaid sales tax. Therefore, on August 14, 2008, petitioner filed an
16 amended return on which it claimed a deduction of \$608,907 for the cost of tax-paid purchases resold
17 prior to use, and reported taxable sales of \$167,364 and tax of \$13,808.00. The Sales and Use Tax
18 Department (Department) applied \$1,812.00 to the amended return from a larger payment that
19 petitioner had made on April 30, 2008, and assessed \$11,996.00, the unpaid portion of the tax liability,
20 in a determination issued on December 9, 2010.

21 In an audit of petitioner for the period January 1, 2006, through December 31, 2008, the
22 Department found that the deduction for costs of tax-paid purchases resold for June 2007 should be
23 increased by \$76,908, from \$608,907 to \$685,815. This increase to the deduction results in a reduction
24 to the taxable sales for that month, from \$167,364 to \$90,456 (\$167,364 - \$76,908), and a reduction of
25 \$6,346.00 to the tax from \$13,808.00 to \$7,462.00 (\$90,456 x 8.25 percent). In reviewing the Board's
26 records, we found that petitioner also had filed an amended return for May 2007, and amendments to
27 that return showed a tax overpayment of \$1,404.00. Since the tax credit of \$1,404.00 had not yet been
28 applied to an outstanding liability, we recommended that the Department apply the credit as an offset

1 to the liability at issue here, which results in a tax balance of \$6,058.00 (\$7,462.00 - \$1,404.00) before
2 applying payments. If only the payment of \$1,812.00 initially applied to this liability is taken into
3 consideration, then the remaining tax due would be \$4,246.00. However, to date, payments of
4 \$2,060.94 have been applied to the liability, leaving a balance of tax due of \$3,997.06.

5 Petitioner contends that there are other tax credits or payments that should have been applied to
6 this liability, and if all credits and payments were applied, the tax would be reduced to approximately
7 \$3,000. However, petitioner has not provided any documentation to support this contention.

8 The Department states that it reviewed its records and was unable to find any additional tax
9 credits or unapplied payments that could be used to further offset this liability. We also reviewed the
10 records of petitioner's account, but, other than the adjustments recommended in the D&R, found no
11 additional tax credits or unapplied payments. Therefore, we find that no additional adjustments are
12 warranted.

13 **OTHER MATTERS**

14 None.

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18 Summary prepared by Lisa Burke, Business Taxes Specialist III
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