

**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: )  
 SHRI RANCHHOD CORPORATION, ) Account Number SR EH 97-148319  
 dba Gas Up. ) Case ID 572114  
 Petitioner ) Colton, San Bernardino County

Type of Business: Gas station with mini-mart

Audit period: 01/01/07 – 12/31/09

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$3,755,588		
Negligence penalty	\$ 15,154		
As determined		\$172,928.16	\$17,292.85
Pre-D&R adjustment		- 19,391.13	- 1,939.15
Post-D&R adjustment		<u>- 1,998.40</u>	<u>- 199.81</u>
Proposed redetermination		\$151,538.63 <sup>1</sup>	\$15,153.89
Less concurred		<u>- 476.03</u>	<u>00.00</u>
Balance, protested		<u>\$151,062.60</u>	<u>\$15,153.89</u>
Proposed tax redetermination		\$151,538.63	
Interest through 10/31/14		61,504.14	
Negligence penalty		<u>15,153.89</u>	
Total tax, interest, and penalty		<u>\$228,196.66</u>	
Monthly interest beginning 11/01/14		<u>\$757.69</u>	

This matter was scheduled for Board hearing in August 2014, but petitioner did not respond to the Notice of Hearing. Thus, the matter was scheduled for decision on the nonappearance calendar. Subsequently, petitioner responded and the matter was rescheduled.

**UNRESOLVED ISSUES**

**Issue 1:** Whether additional adjustments are warranted to the amount of unreported taxable sales. We find no further adjustments are warranted.

<sup>1</sup> The proposed redetermined amount of tax is net of the unclaimed sales tax prepayments of \$148,716.

1           Petitioner operated a gasoline station with a mini-mart from November 1997 through June  
2 2013, at which time the business reorganized. For audit, petitioner provided federal income tax returns  
3 for 2007 and 2008, mini-mart purchase journals, mini-mart merchandise purchase invoices for June  
4 2009 through August 2009, and fuel purchase invoices for March 2009 through December 2009.  
5 Petitioner provided no sales records for the audit period. Petitioner stated that reported sales were  
6 estimated based on a markup of purchases. Given the lack of sales records, the Sales and Use Tax  
7 Department (Department) established petitioner's audited taxable sales by adding separate markups to  
8 audited costs of goods sold for gasoline, diesel fuel, and mini-mart merchandise. The Department  
9 conducted shelf tests to calculate a weighted markup of 5.27 percent for gasoline and a gross profit of  
10 \$0.5079 per gallon of diesel fuel sold, which it used to establish audited gasoline sales of \$3,894,891  
11 and audited taxable diesel fuel sales of \$149,919. The Department found that recorded mini-mart and  
12 propane purchases appeared to be understated based on the frequency of purchases from each vendor,  
13 and it established audited taxable mini-mart and propane purchases by projecting the available  
14 purchases to the periods for which no purchases were recorded. The Department then reduced audited  
15 taxable mini-mart purchases by 1 percent for pilferage, and 1 percent for the cost of self-consumed  
16 taxable merchandise, to establish audited costs of taxable merchandise sold for the audit period. The  
17 Department then conducted a shelf-test and computed separate markups by product category, which it  
18 added to the audited cost of taxable merchandise sold to establish audited taxable mini-mart and  
19 propane sales of \$710,030. In a post-D&R reaudit, audited taxable mini-mart and propane sales were  
20 reduced to \$685,081 after the Department corrected computational errors. In sum, the Department  
21 established audited taxable sales of \$4,729,891, which resulted in unreported taxable sales of  
22 \$3,755,588.

23           Petitioner contends that the audited markup on gasoline and the audited gross profit on diesel  
24 fuel are overstated. Further, petitioner asserts audited purchases of cigarettes and tobacco are  
25 overstated. We find that the documentary evidence petitioner provided indicates the audited markup  
26 on gasoline and the audited gross profit on diesel fuel are conservative. Further, petitioner provided no  
27 documentary evidence to support its contention that audited purchases of cigarettes and tobacco are  
28 overstated. Thus, we reject petitioner's contentions, and we recommend no additional adjustments.



**MARKUP TABLE****Gas station with mini-mart**

Percentage of taxable vs. nontaxable purchases	92.59% <sup>2</sup> mini-mart 100% gasoline 100% diesel fuel 100% propane
Mark-up percentages developed	13.14% liquor 15.54% beer 35.72% soda 15.50% cigarettes/tobacco 69.66% sundries 20.62% periodicals 33.27% propane
Self-consumption allowed in dollars	\$5,959
Self-consumption allowed as a percent of taxable purchases	1%
Pilferage allowed in dollars	\$5,959
Pilferage allowed as a percent of taxable purchases	1%

<sup>2</sup> The Department did not compute a percentage of taxable to total purchases after it established audited purchases of taxable merchandise. We computed a ratio 92.59 percent by dividing audited taxable mini-mart purchases of \$591,737 by audited total mini-mart purchases of \$639,094.