

**Of 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: )  
 HEZGHIAHOO AHARON INVESTMENT INC., ) Account Number SR AR 100-856824  
 dba HAI Inc. ) Case ID 611158  
 Petitioner ) Oxnard, Ventura County

Type of Business: Gasoline station

Audit period: 04/01/08 – 03/31/11

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable sales	\$302,044
Unreported taxable cigarette rebates	\$19,483
Tax, as determined and protested	\$18,351.28
Interest through 2/28/15	<u>6,353.62</u>
Total tax and interest	<u>\$24,704.90</u>
Monthly interest beginning 3/1/15	<u>\$ 91.76</u>

A Notice of Appeals Conference was mailed to petitioner’s address of record, and the notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the opportunity to provide any additional arguments and evidence in writing it wished us to consider, but it did not respond.

**UNRESOLVED ISSUES**

**Issue 1:** Whether adjustments to the amount of unreported taxable sales are warranted. We conclude that no adjustments are warranted.

Petitioner has operated a gasoline station with a mini-mart since January 2007. For audit, petitioner provided its federal income tax returns, monthly sales summary reports for the period July 1, 2008, through March 31, 2011, fuel purchase invoices, and purchase invoices for purchases of capital assets. The Sales and Use Tax Department (Department) compiled recorded taxable fuel sales (gasoline and diesel fuel combined) of \$5,199,962, and recorded taxable mini-mart sales of \$487,203 from petitioner’s monthly sales summary reports for the period July 1, 2008, through June 30, 2010. A

1 comparison of recorded taxable sales of \$5,687,165 (\$5,199,962 + \$487,203) with petitioner's reported  
2 taxable sales of \$5,465,014 for the same period showed unreported taxable sales of \$222,151. Of that  
3 amount, the Department computed that unreported taxable sales of \$22,879 were for the last two  
4 quarters of 2008, and established unreported taxable sales of \$11,440 for the second quarter of 2008  
5 based on the quarterly average. In sum, the Department established unreported taxable sales of  
6 \$233,591 for the period April 1, 2008, through June 30, 2010.

7         Beginning July 1, 2010, Revenue and Taxation Code section 6357.7 provides an exemption for  
8 the State portion of the sales and use taxes for the sale of motor vehicle fuel (defined as gasoline and  
9 aviation fuel). For the period, July 1, 2010, through March 31, 2011, the Department compiled  
10 recorded gasoline sales of \$2,477,404, recorded diesel fuel sales of \$202,992, and recorded taxable  
11 sales of mini-mart merchandise of \$189,339. The Department then subtracted recorded gasoline sales  
12 from total recorded taxable sales of \$2,869,735 to compute recorded taxable sales subject to the State  
13 portion of the tax of \$392,331. For the same period, petitioner reported taxable sales of \$2,909,827,  
14 including reported gasoline sales of \$2,585,962, which resulted in reported taxable sales subject to the  
15 State portion of the tax of \$323,865. The Department compared this amount with recorded taxable  
16 sales subject to the State portion of the tax of \$392,331, and established unreported taxable sales of  
17 \$68,453. It added this amount to unreported taxable sales of \$233,591 computed for the earlier period  
18 to establish unreported taxable sales of \$302,044 for the audit period.

19         In its petition, petitioner states that it will provide evidence to show that the amount of  
20 unreported taxable sales established in the audit is overstated. However, petitioner has not provided  
21 any evidence to demonstrate that computing unreported taxable sales based on its recorded sales  
22 resulted in an overstatement. We find that the amounts recorded in petitioner's monthly sales  
23 summary reports are compelling evidence of its sales, and our review of the audit work papers showed  
24 no errors in the audit methodology or in the computations. Thus, we find no basis on which to  
25 recommend any adjustments.

26         **Issue 2:** Whether any adjustment to the amount of unreported taxable cigarette rebates is  
27 warranted. We conclude that no adjustment is warranted.

1 Information obtained by the Department from the manufacturer of the brands of cigarettes sold  
2 by petitioner showed that petitioner received cigarette rebates of \$14,100 for 2009, \$4,575 for 2010,  
3 and \$1,613 for the period January 1, 2011, through June 30, 2011. Since the audit period ended  
4 March 31, 2011, the Department divided \$1,613 by two to compute cigarette rebates of \$807 for the  
5 first quarter of 2011. In sum, the Department established cigarette rebates of \$19,483 for the audit  
6 period. The Department found that the rebates at issue are gross receipts under Revenue and Taxation  
7 Code section 6012, because the rebates were given in exchange for a specific reduction in the retail  
8 selling price of the cigarettes. Based on its finding that petitioner did not include cigarette rebates in  
9 its recorded taxable sales, the Department established unreported taxable cigarette rebates of \$19,483.

10 Petitioner asserts that it did not collect sales tax reimbursement on the cigarette rebates because  
11 it was not aware that the rebates were taxable, and therefore, it should not be held liable for the tax.

12 It is undisputed that petitioner received cigarette rebate payments from someone other than its  
13 own cigarette vendors (the cigarette manufacturer) in exchange for specific reductions to its retail  
14 selling price for the cigarettes. Thus, we conclude that the rebates received by petitioner are a part of  
15 its taxable gross receipts from sales of cigarettes. Also, since petitioner did not know that rebates  
16 received from cigarette manufacturers are subject to tax, and did not collect sales tax reimbursement on  
17 such rebates, we find that the cigarette rebates were not included in petitioner's recorded taxable sales,  
18 and thus, were not included in unreported taxable sales of \$302,044 already established. Since the  
19 cigarette rebates were a part of petitioner's gross receipts from retail sales of cigarettes, and there is no  
20 provision that a retailer does not owe sales tax if it has not collected sales tax reimbursement from its  
21 customers, we conclude that no adjustment is warranted.

#### 22 OTHER MATTERS

23 None.

24  
25 Summary prepared by Lisa Burke, Business Taxes Specialist III  
26  
27  
28