

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION FINAL ACTION SUMMARY

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 HEZGHIAHOO AHARON INVESTMENT INC.,) Account Number SR AR 100-856824
 6 dba HAI Inc.) Case ID 611158
 7 Petitioner) Oxnard, Ventura County

8 Type of Business: Gasoline station

9 Audit period: 04/01/08 – 03/31/11

10 <u>Item</u>	<u>Disputed Amount</u>
11 Unreported taxable sales	\$302,044
12 Tax, as determined and protested	\$18,351.28 ¹
13 Interest through 11/30/15	<u>7,179.46</u>
14 Total tax and interest	<u>\$25,530.74</u>
15 Monthly interest beginning 12/01/15	<u>\$ 91.76</u>

16 The Board held a hearing regarding this matter on February 25, 2015. The Board ordered that
 17 the hearing be continued to a later date and granted petitioner 30 days to provide additional records and
 18 the Sales and Use Tax Department (Department) 30 days to respond. The 30-day deadline for the
 19 Department was subsequently extended at the Department's request. Based on petitioner's
 20 submissions and the Department's response, we do not recommend adjustments, as discussed below
 21 under Post Hearing Developments.

22 The continued hearing was scheduled in November 2015, but petitioner did not respond to the
 23 Notice of Hearing. Thus, the matter is scheduled for decision on the nonappearance calendar.

24 **UNRESOLVED ISSUE**

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

27 ¹ The \$18,351.28 represents tax on the total determined measure of \$321,527, \$24,389.28, less a credit for prepayments to
 28 fuel vendors of \$6,038.00. At the Board hearing, petitioner conceded that it owes tax on the unreported taxable cigarette
 rebates of \$19,483. Thus, the total amount of disputed tax is \$23,277.28 (\$24,389.28 - \$1,112.00 tax related to the rebates).
 Since that amount is greater than the determined tax of \$18,351.28, we show that entire amount as disputed.

1 Petitioner has operated a gasoline station with a mini-mart since January 2007. For audit,
2 petitioner provided its federal income tax returns, monthly sales summary reports for the period July 1,
3 2008, through March 31, 2011, fuel purchase invoices, and purchase invoices for purchases of capital
4 assets. The Department compiled recorded taxable fuel sales (gasoline and diesel fuel combined) of
5 \$5,199,962, and recorded taxable mini-mart sales of \$487,203 from petitioner's monthly sales
6 summary reports for the period July 1, 2008, through June 30, 2010. A comparison of recorded
7 taxable sales of \$5,687,165 ($\$5,199,962 + \$487,203$) with petitioner's reported taxable sales of
8 \$5,465,014 for the same period showed unreported taxable sales of \$222,151. Of that amount, the
9 Department computed that unreported taxable sales of \$22,879 were for the last two quarters of 2008,
10 and established unreported taxable sales of \$11,440 for the second quarter of 2008 based on the
11 quarterly average. In sum, the Department established unreported taxable sales of \$233,591 for the
12 period April 1, 2008, through June 30, 2010.

13 Beginning July 1, 2010, Revenue and Taxation Code section 6357.7 provides an exemption for
14 the State portion of the sales and use taxes for the sale of motor vehicle fuel (defined as gasoline and
15 aviation fuel). For the period, July 1, 2010, through March 31, 2011, the Department compiled
16 recorded gasoline sales of \$2,477,404, recorded diesel fuel sales of \$202,992, and recorded taxable
17 sales of mini-mart merchandise of \$189,339. The Department then subtracted recorded gasoline sales
18 from total recorded taxable sales of \$2,869,735 to compute recorded taxable sales subject to the State
19 portion of the tax of \$392,331. For the same period, petitioner reported taxable sales of \$2,909,827,
20 including reported gasoline sales of \$2,585,962, which resulted in reported taxable sales subject to the
21 State portion of the tax of \$323,865. The Department compared this amount with recorded taxable
22 sales subject to the State portion of the tax of \$392,331, and established unreported taxable sales of
23 \$68,453. It added this amount to unreported taxable sales of \$233,591 computed for the earlier period
24 to establish unreported taxable sales of \$302,044 for the audit period.

25 In its petition, petitioner states that it will provide evidence to show that the amount of
26 unreported taxable sales established in the audit is overstated. However, petitioner has not provided
27 any evidence to demonstrate that computing unreported taxable sales based on its recorded sales
28 resulted in an overstatement. We find that the amounts recorded in petitioner's monthly sales

1 summary reports are compelling evidence of its sales, and our review of the audit work papers showed
2 no errors in the audit methodology or in the computations. Thus, we find no basis on which to
3 recommend any adjustments.

4 **POST HEARING DEVELOPMENTS**

5 The audit established tax on unreported taxable sales based on a reconciliation of reported and
6 recorded taxable sales shown on monthly sales reports (MSR's). After the Board hearing, petitioner
7 provided MSR's as well as hand-written quarterly summaries and sales and use tax returns for the
8 period July 1, 2009, through September 30, 2010. For the fourth quarter 2010 (4Q10), petitioner
9 provided a store sales summary report and the sales and use tax return.

10 The Department found that sales from the MSR's submitted during the original audit exceeded
11 sales from the recently submitted MSR's by \$74,820 for the six quarterly periods. The Department
12 asked petitioner's representative for an explanation of the differences, but did not receive a response.
13 In addition, the Department noted that the recently-submitted MSR's contained partial sales
14 information or no sales information for nine days during the period July 1, 2009, through March 31,
15 2010, and it requested sales summaries for those missing days. The Department also requested that
16 petitioner provide source documents (i.e., cash register tapes, detail information from the Point of Sale
17 Reports, etc.) for several days during each monthly period to support the sales shown on the recently
18 submitted MSR's.

19 Petitioner did not provide the sales summaries for the missing days that were requested by the
20 Department. In response to the Department's request for source documents, petitioner furnished
21 computer-generated daily sales summary reports without any source documents for 17 days, less than
22 half the number of days requested by the audit staff. The Department found that the start and close
23 times on the reports were inconsistent. Further, from its Internet research, the Department found that
24 petitioner operates the service station from 5:00 a.m. to 1:00 a.m. each day. However, none of the
25 daily sales reports provided by petitioner showed sales for all those business hours. Also, the
26 Department found discrepancies for a few days between the daily sales reports and the sales shown on
27 the recently-submitted MSR's.

