

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:)
COLLEGE SHELL, LLC.) Account Number: SR AR 101-662261
Case ID 576308
Petitioner)
Ventura, Ventura County

Type of Business: Gas station with mini-mart

Audit period: 01/01/07 – 12/31/09

<u>Item</u>	<u>Disputed Amount</u>
Unreported taxable mini-mart merchandise sales	\$326,410
Over-claimed credit for prepaid sales tax paid to fuel vendors	\$ 64,707 (tax)
Tax, as determined	\$47,164.70
Pre-D&R adjustments	- 3,811.69
Post-D&R adjustments	<u>- 7,578.05</u>
Proposed redetermination, protested	<u>\$35,774.96¹</u>
Proposed tax redetermination	\$35,774.96
Interest through 02/28/14	<u>13,917.96</u>
Total tax, and interest	\$49,692.92
Payments	<u>- 20.00</u>
Balance	<u>\$49,672.92</u>
Monthly interest beginning 03/01/14	<u>\$ 178.77</u>

UNRESOLVED ISSUES

Issue 1: Whether any further adjustments are warranted to the amount of unreported taxable mini-mart sales. We find no further adjustments are warranted.

Petitioner has operated a gasoline station with a mini-mart and car wash since 2006. For audit, petitioner provided daily sales reports, sales summary reports, merchandise purchase invoices,

¹ The disputed tax of \$35,774.96 represents over-claimed prepayments of sales tax to vendors of fuel of \$64,707 (disputed) less a credit amount of tax related the remaining audit items of \$28,932.04, which is based on a credit measure of \$418,429, comprised of unreported mini-mart sales of \$326,409 (disputed), a concurred credit amount of tax-paid purchases resold of \$183,041, a credit difference between recorded and reported taxable sales of \$577,925 (which petitioner claims should be increased by \$20,170) and self-consumption of \$16,128 (concurred). We note the credit amount of tax of \$28,932.04 represents a net tax rate of 6.9 percent. This is due to the fact the audit items resulted in a credit measure for state, local and county taxes, but resulted in an understatement for transit district taxes.

1 merchandise purchase summaries, sales and use tax returns, and federal income tax returns. Using
2 recorded purchases and a percentage of taxable to total purchases computed in a segregation test, the
3 Sales and Use Tax Department (Department) computed audited taxable mini-mart merchandise
4 purchases, which exceeded recorded taxable mini-mart sales for the audit period. Further, the
5 Department found the book markups on taxable mini-mart sales were inconsistent throughout the audit
6 period ranging from a low of – 19.71 percent to a high of 10.55 percent. As a result, the Department
7 established audited taxable mini-mart sales using the markup method. The Department used the
8 audited cost of taxable goods sold (audited taxable mini-mart purchases net of 1 percent for pilferage)
9 and a markup computed in a shelf-test to compute taxable mini-mart sales which exceeded the
10 recorded amount by \$359,270. In a pre-conference reaudit, the Department made an adjustment to
11 allow 1 percent for self-consumption, which reduced unreported taxable mini-mart sales by \$11,135, to
12 \$348,135, and established a separate measure of tax of \$8,065 for the cost of self-consumed taxable
13 mini-mart merchandise. In a post-D&R reaudit, unreported taxable mini-mart sales were further
14 reduced to \$326,410. The reductions resulted from increasing the allowance for self-consumption to
15 2 percent and from corrections to shelf-test selling prices, resulting in the computation of separate
16 markups for each year in the audit.

17 Petitioner contends the merchandise purchases recorded in its merchandise purchase summaries
18 and used by the Department to establish unreported taxable sales are overstated by \$60,833. After the
19 appeals conference, petitioner provided its calculation of merchandise purchases using its federal
20 income tax returns, which the Department rejected because petitioner did not provide detailed purchase
21 information to support its calculation. Moreover, petitioner has not provided sufficient evidence to
22 show how the merchandise purchases recorded in its own records are overstated. In the absence of
23 evidence that petitioner’s recorded merchandise purchases are overstated, we find no further
24 adjustments are warranted.

25 **Issue 2:** Whether adjustments are warranted to the credit amount for the difference between
26 recorded and reported taxable sales. We find no adjustments are warranted.

27 The Department found that petitioner’s reported taxable sales exceeded recorded taxable sales,
28 adjusted for claimed tax-paid purchases resold, by \$540,037, and it allowed a credit in the audit.
Petitioner contends an additional credit of \$20,170 is warranted, and at the conference provided

1 schedules it contends support the additional adjustment. In the post-D&R reaudit, the Department
2 combined the credit measure for unclaimed diesel excise tax deductions (which is not in dispute) with
3 the credit amount for the difference between recorded and reported taxable sales.² With respect to the
4 latter credit, petitioner does not dispute the amount that has been allowed but argues that the credit
5 should be increased by \$20,170. We examined petitioner's schedules and we find petitioner's
6 calculations are flawed because they do not compare recorded taxable sales to reported taxable sales.
7 Moreover, we examined the Department's audit work papers and found the Department's calculations
8 overstated the credit by \$2,843. Consequently, we recommended in the D&R that the Department's
9 computational error be corrected, and we reject petitioner's contention that additional adjustments are
10 warranted.

11 **Issue 3:** Whether further adjustments to the amount of the over-claimed credit for sales tax pre-
12 paid to distributors of fuel are warranted. We find no further adjustments are warranted.

13 For four of the twelve quarterly periods in the audit, petitioner claimed a credit for sales tax
14 pre-paid to its fuel suppliers. For the eight remaining quarterly periods in the audit, petitioner claimed
15 a tax-paid purchases resold deduction instead of claiming a credit for sales tax pre-paid to its
16 distributors. During the audit, the Department found that, for the period October 1, 2007, through
17 October 27, 2009, petitioner's fuel suppliers agreed to charge petitioner sales tax on the full amount of
18 fuel purchased instead of charging the pre-paid sales tax based on the number of gallons, thus allowing
19 petitioner to claim a tax-paid purchases resold credit for these periods. Notwithstanding any
20 computational errors, both methods resulted in petitioner obtaining credit for sales tax pre-paid to its
21 fuel suppliers. Initially, the Department examined petitioner's fuel purchase invoices for the four
22 quarterly periods for which petitioner claimed a credit and found petitioner over-claimed its credit by
23 \$75,079 in tax. In a pre-conference reaudit and at the appeals conference, petitioner provided
24 additional evidence and the Department reduced the over-claimed credit to \$64,707 in tax. In
25 preparing this summary, we found the Department's audit work papers to be misleading because the
26 amount of over-claimed sales tax prepaid includes \$68,719 for the third quarter of 2007 (3Q07).

27 _____
28 ² We note that the Department's reason for combining these two audit items is not explained in the reaudit workpapers.

1 However, for this quarter, the Department found that petitioner's fuel suppliers charged petitioner sales
2 tax on the full amount of fuel purchased, and that petitioner had inadvertently claimed a credit for sales
3 tax pre-paid to its fuel suppliers instead of claiming a tax-paid purchases resold deduction.

4 Consequently, the Department disallowed the claimed prepayment of sales tax to fuel suppliers for the
5 3Q07 and created a separate tax-paid purchases resold deduction of \$947,805 ($\$68,719 \div 7.25$ percent),
6 which petitioner had not actually claimed. This approach effectively offset the audited amount of
7 over-claimed prepayment by an identical amount of tax paid on purchases that were resold. So, in
8 reality the disallowed claimed sales tax prepayments to fuel suppliers for the 3Q07 was actually zero
9 and the actual adjustment related to claimed prepayments of sales tax to fuel vendors for the audit
10 period is a credit of \$4,012 ($\$64,707 - \$68,719$). Petitioner has not provided any additional fuel
11 purchase invoices or documentation to support any additional adjustments. In the absence of any
12 supporting documentation, we conclude that no further adjustments are warranted and we recommend
13 none.

14 **RESOLVED ISSUES**

15 In the petition for redetermination, petitioner disagreed with the entire liability, and did not
16 specifically mention each audit item. Therefore, we considered all audit items to be in dispute.
17 However, at the appeals conference, petitioner conceded to the measures of tax for tax-paid purchases
18 resold, the unclaimed diesel fuel excise tax deductions, and the unreported cost of taxable merchandise
19 self-consumed. Accordingly, these issues have been resolved.

20 **OTHER MATTERS**

21 None.

22
23 Summary prepared by Ted Matthies, Business Taxes Specialist III
24
25
26
27
28

MARKUP TABLE**Liquor Store**

Percentage of taxable vs. nontaxable purchases	72.88%
Mark-up percentages developed	37.09% for 2007 38.19% for 2008 39.25% for 2009
Self-consumption allowed in dollars	\$16,128
Self-consumption allowed as a percent of taxable purchases	2.00%
Pilferage allowed in dollars	\$7,903.00
Pilferage allowed as a percent of taxable purchases	1.00%