

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petitions for Redetermination)
Under the Sales and Use Tax Law of:)
RANDEEP SINGH DHILLON, dba) Account Number: SR ARH 100-004915
ARCO AM PM #81799) Case ID 485664
BEALE MONTEREY ENTERPRISES, INC.) Account Number: SR ARH 100-676725
SAM SAMBEE ENTERPRISES, INC.) Case ID 485668
Petitioners) Account Number: SR ARH 100-751157
) Case ID 485729
) Bakersfield, Kern County

Type of Business: ARCO gas stations and mini-marts
Audit periods: 04/01/02 – 06/30/07 (485664)
01/07/06 – 06/30/07 (485668)
06/01/06 – 06/30/07 (485729)

<u>Item</u>	<u>Disputed Amount</u>
Fraud penalty	\$107,715 (485664)
	\$ 35,855 (485668)
	\$ 48,181 (485729)
Amnesty double fraud penalty	\$ 711 (485664)
Amnesty interest penalty	\$ 274 (485664)

	<u>485664</u>		<u>485668</u>		<u>485729</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$430,860.17	\$108,425.75	\$143,418.91	\$35,854.74	\$192,723.29	\$48,180.83
Less concurred	<u>-430,860.17</u>	<u>00.00</u>	<u>-143,418.91</u>	<u>00.00</u>	<u>-192,723.29</u>	<u>00.00</u>
Balance, protested	<u>\$ 00.00</u>	<u>\$108,425.75</u>	<u>\$ 00.00</u>	<u>\$35,854.74</u>	<u>\$ 00.00</u>	<u>\$48,180.83</u>
Proposed tax redetermination		\$430,860.17		\$143,418.91		\$192,723.29
Interest through 10/30/11		180,950.78		55,747.06		72,810.36
Fraud penalty		107,715.06		<u>35,854.74</u>		<u>48,180.83</u>
Amnesty double fraud penalty		710.69				
Amnesty interest penalty		<u>273.59</u>				
Total tax, interest, and penalty		\$720,510.29		\$235,020.71		\$313,714.48
Payments		<u>- 187,493.00</u>		<u>- 25,715.20</u>		<u>- 26,571.77</u>
Balance Due		<u>\$533,017.29</u>		<u>\$209,305.51</u>		<u>\$287,142.71</u>
Monthly interest beginning 11/1/11		<u>\$1,216.84</u>		<u>\$588.52</u>		<u>\$830.76</u>

1 This matter was scheduled for Board hearing on June 23, 2011, but was postponed at
2 petitioners' request because their representative had a scheduling conflict.

3 UNRESOLVED ISSUES

4 **Issue 1:** Whether the understatements were the result of fraud or intent to evade the tax.¹ We
5 conclude that they were.

6 Petitioners operated ARCO AM/PM gas stations with mini-marts. Mr. Dhillon, who owned
7 one of the businesses as a sole proprietor and was the president and majority owner of each corporation
8 that operating the two other businesses, has been involved in the operation of ARCO gas stations for
9 over 25 years, either as an employee, manager, operator, or owner, and holds a doctorate's degree in
10 Economics. Mr. Dhillon purchased his first ARCO gas station around 1997, and, at the time of the
11 audits at issue, owned at least nine gas stations, including at least four ARCO AM/PM gas stations
12 with mini-marts. For all three of the locations at issue here, ARCO had a point of sale computer
13 system in place that recorded all daily gasoline and mini-mart sales and transmitted that information
14 electronically to ARCO. From that data, ARCO prepared summary reports, called Royalty Reports or
15 Royalty Sheets, and sent copies to each business. ARCO also provided each business with reports of
16 its gasoline purchases, by location.

17 When the Sales and Use Tax Department (Department) requested copies of the Royalty
18 Reports, Mr. Dhillon initially stated that the reports were unavailable and that most of the records had
19 been damaged by water as the result of a broken pipe. However, a year later, when the Department
20 indicated it would subpoena the records directly from ARCO, Mr. Dhillon produced copies of the
21 Royalty Reports. With only a few exceptions, described in the D&R, the Department used information
22 from the available Royalty Reports to establish audited taxable sales for the corresponding periods, and
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25 ¹ Without regard to whether the finding of fraud is upheld, the determinations issued to Beale Monterey Enterprises, Inc.
26 and Sam Sambee Enterprises, Inc. were timely issued for the entire periods under the three-year statute of limitations. The
27 determination issued to Randeep Singh Dhillon was timely issued for the period April 1, 2004, through June 30, 2007,
28 because petitioner signed a series of waivers of the three-year statute of limitations, and was timely issued for the period
April 1, 2002, through December 31, 2002, under the ten-year statute of limitations promulgated as part of the amnesty
program. Absent a finding of fraud, the determination issued to Randeep Singh Dhillon would not have been timely for the
period January 1, 2003, through March 31, 2004.

1 average sales data from the available reports to establish audited taxable sales for the periods for which
2 the reports were not available. The Department computed understatements of \$11,375,163 (case ID
3 485664), \$3,721,047 (case ID 485668), and \$5,336,666 (case ID 485729). The Department also noted
4 that petitioners were claiming only one-third of the amount of prepaid sales tax paid to ARCO, and that
5 the claimed amounts of prepaid sales tax were consistent with the reported amounts of gasoline sales,
6 which the Department found to be evidence that the understatements resulted from fraud.

7 Petitioners concede the audited understatements, but they dispute the understatements were the
8 result of fraud. Petitioners assert that the understatements were unintentional and that they first learned
9 of the mistakes during the audits. Mr. Dhillon stated that, during the audit periods, he and his wife
10 were not directly involved with the day-to-day operations of any of the locations, and that they relied
11 on employees to operate the businesses and to properly report taxable sales to the Board. Mr. Dhillon
12 made various, sometimes inconsistent, comments regarding his operation of the businesses. For
13 example, despite his experience in this type of business, he stated he was unaware that the businesses
14 needed to pay tax on their sales of fuel in addition to the amounts of tax prepaid to ARCO. He also
15 asserted that he did not receive the Royalty Reports for either of the corporate businesses, while ARCO
16 indicated that it had sent Mr. Dhillon the Royalty Reports for all three businesses for the entire audit
17 periods. Despite asserting that reporting of tax was the responsibility of managers (described by
18 Mr. Dhillon as relatives and life-long friends, which was contradicted by other evidence), Mr. Dhillon
19 conceded that his wife prepared the returns, each of which was signed by Mr. Dhillon or his wife.
20 (Even if the managers had been responsible for fraudulent reporting as petitioners seem to assert, the
21 fraud penalties would still be properly imposed since such actions would have been within the scope of
22 the managers' employment and imputed to the businesses.)

23 The Department must establish fraud by clear and convincing evidence. (Cal. Code Regs., tit.
24 18, § 1703, subd. (c)(3)(C).) Although fraud may not be presumed, it is rare to find direct evidence
25 and a determination of fraud is often based on circumstantial evidence. In that regard, certain facts or
26 actions are by nature evidence of a deliberate attempt to evade the payment of tax. Here, petitioners
27 had actual knowledge of their taxable sales, as recorded on the Royalty Sheets, and their contentions to
28 the contrary are inconsistent and unconvincing. Despite such knowledge, petitioners failed to report a

1 combined \$767,001 in taxes (after deducting the prepaid sales tax credit), which represents an
2 exceptionally high error rate of 334 percent when compared with reported taxes of \$229,765 for the
3 three businesses. Understatements of this magnitude are strong evidence of fraud, particularly since
4 the correct amounts of sales were readily available to petitioners from the Royalty Reports. Moreover,
5 petitioners carefully coordinated a consistent reduction of the claimed prepaid sales tax credit with a
6 corresponding reduction in reported gasoline sales throughout every quarter of the audit periods,
7 effectively concealing the underreported gasoline sales from someone reviewing only the reported
8 figures. This is convincing evidence of petitioners' intent to evade tax. We find that petitioners' fraud
9 has been established by clear and convincing evidence, and that the penalties are properly imposed.

10 **Issue 2:** Whether relief of the amnesty penalties is warranted. We find no basis to recommend
11 relief.

12 Since Mr. Dhillon did not file for amnesty or pay the tax and interest due (or enter into a
13 qualified installment payment agreement) for amnesty-eligible periods, an amnesty double fraud
14 penalty of \$710.69 was added to the determination issued to the sole proprietorship. Also, an amnesty
15 interest penalty of \$273.59 will be added when the liability becomes final.

16 Petitioner has filed a request for relief of the amnesty penalties on the basis that he did not
17 understand the amnesty program. We find that the Department notified petitioner of the amnesty
18 program, and we reject his assertion that he did not understand the program. Rather, we find that
19 petitioner's failure to participate in the amnesty program was not the result of reasonable cause, and
20 there is no basis to recommend relief of the amnesty penalties.

21 **OTHER DEVELOPMENTS**

22 None.

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24 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
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