

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 SALIM RAMZAN ALI JIVANI and)
 6 FARIDA SALIM JIVANI)
 7 dba Cigarette Palace) Account Number: SR KHO 97-849121
 8) Case ID 513980; Lemoore, Kings County
 9 dba Omega Tobacco) Account Number: SR KHO 100-573227
 10) Case ID 513982; Tulare, Tulare County
 11 dba Omega Tobacco) Account Number: SR KHO 100-585357
 12) Case ID 513983; Visalia, Tulare County
 13 dba Cigarette Palace) Account Number: SR KHO 97-962099
 14) Case ID 513984; Hanford, Kings County
 15 Petitioner)

16 Type of Business: Cigarette and tobacco stores
 17 Audit periods: 7/1/04 – 6/30/07 (Case ID's 513980, 513984)
 18 7/1/05 – 6/30/07 (Case ID 513982)
 19 9/13/05 – 6/30/07 (Case ID 513983)

<u>Item</u>	<u>Disputed Amounts</u>			
	<u>513980</u>	<u>513982</u>	<u>513983</u>	<u>513984</u>
Unreported coupon redemptions	\$46,891 (Case ID 513980)			
	25,803 (Case ID 513982)			
	7,580 (Case ID 513983)			
	41,706 (Case ID 513984)			
Unreported cigarette buy-down rebates	\$93,880 (Case ID 513980)			
	58,812 (Case ID 513982)			
	30,607 (Case ID 513983)			
	119,762 (Case ID 513984)			
	<u>513980</u>	<u>513982</u>	<u>513983</u>	<u>513984</u>
Tax determined	\$17,949.35	\$9,745.26	\$2,960.72	\$15,663.64
Post-D&R adjustment	- 7,743.44	-3,312.27	- 59.06	- 3,957.19
Proposed tax redetermination, protested	\$10,205.91	\$6,432.99	\$2,901.66	\$11,706.45
Interest through 10/31/12	<u>5,810.12</u>	<u>3,306.92</u>	<u>1,415.79</u>	<u>6,691.94</u>
Total tax and interest	<u>\$16,016.03</u>	<u>\$9,739.91</u>	<u>\$4,317.45</u>	<u>\$18,398.39</u>
Monthly interest beginning 11/1/12	<u>\$51.03</u>	<u>\$32.16</u>	<u>\$14.51</u>	<u>\$58.53</u>

UNRESOLVED ISSUE

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2 **Issue:** Whether further adjustments to the unreported coupon redemptions and cigarette buy-
3 down rebates are warranted. We conclude that no further adjustments are warranted.

4 Petitioner, a husband-and-wife co-ownership, operated four retail stores under separate seller's
5 permits each selling tobacco products and related accessories, as well as chips, soda, and gum.
6 Petitioner recorded by store the amounts of manufacturer coupons it redeemed and cigarette buy-down
7 rebates it received, and reported those amounts on its federal income tax returns as "other income," but
8 did not report any of those amounts on its sales and use tax returns. The Sales and Use Tax
9 Department (Department) verified the recorded amounts through check stubs from the manufacturers
10 and included them in the audited taxable measures.

11 Petitioner contends that it did not collect sales tax reimbursement on the amount of the discount
12 reflected on the manufacturers' coupons, and therefore they are not part of petitioner's gross receipts.
13 Petitioner also argues that many of the coupons were received from manufacturers in exchange for
14 products that the manufacturers had discontinued and removed from petitioner's stores (in lieu of the
15 manufacturers having to reimburse petitioner the purchase price of the inventory that petitioner had
16 initially purchased from distributors or wholesalers), and thus were unrelated to any retail sale.
17 Further, petitioner contends that the taxable portion of both the manufacturers' coupons and the buy-
18 down rebates can be more accurately computed based on a comparison with its 2008 records because it
19 did not receive coupons from manufacturers or make sales for resale after the audit periods.

20 We conclude that the amount of manufacturers' coupons redeemed by petitioner constitute
21 taxable gross receipts because they were received as additional consideration for petitioner's retail
22 sales of tangible personal property. The sales tax owed by petitioner on these amounts is not
23 dependent upon its having collected reimbursement for such tax from its purchasers. With respect to
24 coupons petitioner received directly from manufacturers in exchange for discontinued product, such
25 coupons were consideration for the sale of the discontinued products to the manufacturers, and those
26 sales were taxable retail sales because the manufacturer did not purchase them for the purpose of
27 resale. We conclude that no further adjustments are warranted (that is, other than those discussed in
28 the next section).

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RESOLVED ISSUE

We agree with petitioner that some of the cigarette buy-down rebates were attributable to sales for resale, and recommended a reaudit to remove such rebates from the deficiency. In the post-D&R reaudits, the Department established taxable sales ratios based on reported taxable sales and claimed sales for resale for each location, and applied the taxable sales ratios to the recorded cigarette buy-down rebates to compute the taxable cigarette rebates. In sum, the measures of tax for unreported cigarette buy-down rebates has been reduced by a total of \$205,815, from \$508,876 to \$303,061.

OTHER MATTERS

None.

Summary prepared by Pete Lee, Business Taxes Specialist II