

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:)
MASSOUD KHAZAIE, dba Gas Express) Account Number: SR AR 100-547801
Petitioner) Case ID 459689
Woodland Hills, Los Angeles County

Type of Business: Gas station and mini-mart
Audit period: 04/01/05 – 03/31/08

<u>Item</u>	<u>Disputed Amount</u>		
Unreported sales of gasoline	\$1,190,505		
Relief of interest	Unstated		
		<u>Tax</u>	<u>Penalty</u>
As determined:		\$161,416.82	\$16,141.69
Adjustment - Sales and Use Tax Department		- 17,129.60	- 1,712.98
- Appeals Division		- 3,669.21	- 14,428.71
Proposed redetermination		<u>\$140,618.01</u>	<u>\$ 00.00</u>
Less concurred		- 54,306.37	
Balance, protested		<u>\$ 86,311.64</u>	
Proposed tax redetermination		\$140,618.01	
Interest through 02/29/12		<u>63,876.75</u>	
Total tax and interest		\$204,494.76	
Payments		- 1,365.61	
Balance Due		<u>\$203,129.15</u>	
Monthly interest beginning 03/01/12		<u>\$ 812.31</u>	

This matter was scheduled for Board hearing in October 2011, but petitioner did not respond to the Notice of Hearing. Accordingly, the matter was scheduled for decision on the nonappearance calendar. Subsequently, petitioner requested that the matter be rescheduled for hearing.

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported sales of gasoline. We find no further adjustment is warranted.

Petitioner operates an ARCO gasoline station with a small mini-mart. During the audit period, he also operated a vehicle repair facility with sales of automotive parts. Initially, petitioner did not

1 provide any books and records to the Sales and Use Tax Department (Department) for examination,
2 but he provided some records after the determination was issued.

3 The Department established audited sales of gasoline using the number of gallons petitioner
4 had purchased (based on records from petitioner's supplier) and weekly average retail prices for
5 gasoline sold in the Los Angeles area, published on the U. S. Department of Energy website. To
6 compute the weighted average prices, the Department assumed that 75 percent of the gasoline sold was
7 regular gasoline, 10 percent was mid-grade, and 15 percent was supreme. The Department established
8 the audited taxable sales of repair parts and mini-mart merchandise at amounts equivalent to the
9 amounts claimed on sales and use tax returns for nontaxable labor and exempt sales of food products,
10 respectively. After the determination was issued, petitioner provided a spreadsheet showing his sales,
11 along with various records. The Department rejected the amount of sales shown on the spreadsheet
12 because gasoline purchases (supported by the purchase invoices) exceeded gasoline sales shown on the
13 spreadsheet for almost all of the quarters for which invoices were provided. However, based on its
14 observation of petitioner's actual selling prices, the Department found that petitioner's prices were
15 8.835 cents per gallon less than the average selling prices published on the U. S. Department of Energy
16 website. Accordingly, the Department reduced the audited selling prices by 8.835 cents per gallon. In
17 the D&R we recommended an additional reduction, to reflect revised percentages of sales of each
18 grade of gasoline (85.44 percent for regular, 7.95 percent for mid-grade, and 6.61 percent for
19 premium), based on the Department's review of purchase invoices for April and May 2006.

20 Petitioner concedes that, due to a misunderstanding, he did not pay any tax on sales of gasoline
21 other than the amounts prepaid to his supplier. However, he contends that the audited amount of
22 unreported sales of gasoline should be reduced, and he has prepared a schedule showing gasoline
23 purchases, net of federal and state excise taxes and prepaid sales tax, for the period May 2, 2005,
24 through March 28, 2008. He has then added an estimated markup of five percent to compute his sales
25 of gasoline. Comparing the tax due on those computed sales to the amounts prepaid to his suppliers,
26 petitioner computes an understatement of reported tax of \$54,306.37. As a separate but related
27 argument, petitioner asserts that the audited selling prices for gasoline should be reduced by an
28 additional two cents per gallon.

1 The Department noted that petitioner's computation of his sales incorrectly excluded federal
2 and state excise taxes from the sales of gasoline. The Department recomputed petitioner's sales,
3 correcting that error but using petitioner's computation method, and the resulting understatement of tax
4 was comparable to the amount established in the revised audit. We find that the similarity in those
5 computed figures offers secondary support for the audit findings. Also, we find petitioner has
6 provided no evidence to support his assertion that the audited selling prices for gasoline should be
7 further reduced. In addition, we note that the Department has used audited sales and recorded
8 purchases of gasoline to compute a markup of 3.76 percent, which is in the low end of the range of
9 markups expected for sales of gasoline. We find that there is no basis for further adjustment.

10 **Issue 2:** Whether relief of interest is warranted. We find relief is not warranted.

11 Petitioner asserts that the application of interest is not fair because his underpayments of tax
12 were not intentional, and because he was following instructions provided by Board staff of the Van
13 Nuys District office. Although petitioner has not filed a request for relief of interest signed under
14 penalty of perjury, the D&R addresses this issue and concludes there is no basis to recommend relief of
15 interest, even if petitioner were to file a request under penalty of perjury.

16 **RESOLVED ISSUE**

17 The Department imposed a negligence penalty because petitioner's books and records were
18 inadequate and because petitioner failed to report a substantial portion of his sales and failed to claim a
19 material amount of credits for sales tax prepayments to his fuel supplier. We found in the D&R that the
20 understatement was primarily the result of petitioner's mistaken belief that the sales tax prepaid to his
21 vendors represented the entire amount of his liability for sales tax on sales of fuel. On that basis, we
22 concluded that the understatement was due primarily to petitioner's misunderstanding of his reporting
23 requirements, rather than negligence. We therefore recommend that the negligence penalty be deleted.

24 **OTHER DEVELOPMENTS**

25 None.

26
27 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III
28