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:	
JOGINDER LAL, dba My Mini Mart	Account Number SR KH 97-156391 Case ID 496075
Petitioner	Stockton, San Joaquin County

Type of Business: Gas station with mini-mart

Audit period: 01/01/05 – 12/31/07

Item	Disputed Amount
Unreported taxable sales	$475,742
Negligence penalty	$ 3,849

	Tax	Penalty
As determined	$45,026.90	$4,502.70
Pre-D&R adjustment	- 1,906.55	- 190.67
Post-D&R adjustment	- 4,626.09	- 462.61
Proposed redetermination	$38,494.26	$3,849.42
Less concurred	- 1,909.59	00.00
Balance, protested	$36,584.67	$3,849.42

Proposed tax redetermination	$38,494.26
Interest through 11/30/13	22,575.81
Negligence penalty	3,849.42
Total tax, interest, and penalty	$64,919.49
Payments	- 2,493.15
Balance Due	$62,426.34
Monthly interest beginning 12/01/13	$ 180.01

This matter was scheduled for Board hearing in May 2012, but was postponed for settlement consideration. It was rescheduled for Board hearing in August 2013, but was postponed at petitioner's request for additional time to prepare for the hearing, and due to a scheduling conflict.

UNRESOLVED ISSUES

Issue 1: Whether additional adjustments are warranted to the unreported taxable sales. We find no further adjustment is warranted.

Petitioner has operated a gas station with a mini-mart since 1997. However, he sold the station September 30, 2006, and it was operated by the purchaser until August 14, 2007, when petitioner took the station back and began operating it again under this seller's permit number. At the beginning of the audit period, he operated a second station, which he sold July 29, 2005. The Sales and Use Tax Department (Department) found discrepancies in the limited records petitioner provided for audit, and it decided to establish audited fuel sales using the number of gallons purchased and the statewide average selling prices, and to establish audited mini-mart sales on a markup basis.

To compute audited gasoline sales, the Department used the amount of prepaid sales tax on gasoline to establish the number of gallons of gasoline purchased. To establish the audited selling prices for gasoline, the Department obtained the statewide average retail fuel prices from the Energy Almanac website maintained by the California Energy Commission. It reduced those average prices by 14.55 cents per gallon for the period January 1, 2005, through June 30, 2006, by 14.49 cents per gallon for the period July 1, 2006, through December 31, 2006, and by 10.20 cents per gallon for the year 2007. Those price differentials were based on the Department's comparison of the average prices with petitioner's selling prices recorded on pump reports. In the audit and first reaudit, the Department used ratios of 80 percent and 20 percent, respectively, for petitioner's sales of regular and premium gasoline. In the post-D&R reaudit, those percentages were revised to about 92 percent regular gasoline, 6 percent mid-grade, and 2 percent premium, based on the Department's review of pump reports for six days in August and October 2006. Petitioner also sold diesel fuel during the first three quarters of the audit period, and the Department used a similar procedure to establish audited diesel sales. However, since petitioner provided no evidence of its selling prices for diesel, the Department used the statewide average selling prices for diesel, with no reduction for price differentials.

With respect to mini-mart sales, the Department performed a purchase segregation test to compute a taxable merchandise purchase ratio of 75.76 percent, which it applied to recorded purchases of mini-mart merchandise to establish the audited cost of taxable mini-mart merchandise. It reduced the audited cost of taxable mini-mart merchandise by 1 percent for pilferage, by $213 per month for self-consumed taxable merchandise, and by $5,887 based on petitioner's unsupported assertion that he had to purchase an unusually large amount of merchandise when the purchaser of the business returned the store to him in August 2007, to compute the audited cost of taxable mini-mart sales. The Department added a markup of 32.5 percent, computed in a shelf test, to establish audited taxable mini-mart sales. The computed taxable sales (gasoline sales, diesel sales, and taxable mini-mart sales) exceeded reported taxable sales by $475,742.

Petitioner contends that the audited taxable sales are overstated. He asserts that the gasoline prices used in the computations are too high and that a larger inventory adjustment should be made to reflect the large amount of mini-mart purchases that were necessary when the purchaser returned the business with little merchandise on the shelves. Petitioner asserts that the wide variations in the percentages of error for each year are evidence of errors in the Department's analysis.

Regarding the audited sales of gasoline, petitioner has provided no evidence that the audited selling prices are excessive. Also, the markup computed using the audited sales of gasoline and recorded costs is only 3.07 percent, which is in the low range of markups we generally expect for gasoline sales. Accordingly, we find no further adjustment to audited gasoline sales is warranted. Regarding mini-mart sales, petitioner has not provided records of its mini-mart purchases during the period in question to document a larger inventory adjustment. In the absence of evidence, we find no further adjustment is warranted. Also, we find that the variations in the percentages of error for each year resulted from inconsistencies in petitioner's reported amounts and do not offer evidence of errors in the audit. Accordingly, we find no further adjustment is warranted.

Issue 2: Whether petitioner was negligent. We conclude that he was.

The Department imposed the negligence penalty because petitioner's records were inadequate and because this was petitioner's third audit. Petitioner disputes the penalty but has not offered a specific basis for his assertion that he was not negligent.

Petitioner's records were incomplete and conflicting; the audited understatement of $471,709 ($475,742 less $4,033 for unclaimed exempt food stamp sales) represents an understatement of about 10 percent. We find that the lack of adequate records and the amount of understatement support the imposition of the negligence penalty, particularly since petitioner had been audited twice before and should have been fully aware of the requirement to keep complete records and report accurately.

OTHER MATTERS

None.

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

STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

MARKUP TABLE—TAXABLE MINI-MART SALES

Percentage of taxable to total purchases	75.76%
Mark-up percentage developed	32.5%
Self-consumption allowed in dollars	$213 per month
Self-consumption allowed as a percent of taxable purchases	1.7%
Pilferage allowed in dollars	$3,218
Pilferage allowed as a percent of taxable purchases	1%