

1 2006 (4Q06), and April 1 through April 19, 2007 (2Q07). On January 26, 2010, after numerous
2 unsuccessful attempts to obtain the tax returns from petitioner, the Department issued a Notice of
3 Determination to petitioner for each of the periods, estimating the amounts of tax due based on
4 amounts reported on prior tax returns. Petitioner contended that he timely filed the returns and paid all
5 the taxes due for the liability periods. After the appeals conference, petitioner submitted a 4Q06 tax
6 return that showed \$2,569 tax remained due (after credit for pre-paid sales taxes paid to fuel vendors),
7 and a 2Q07 tax return that showed \$447 tax remained due. The Department accepted the amounts
8 reported on the 4Q06 return and agreed to a reduction in the determination to the \$2,569 tax reported
9 as due on that return. Thus, there is no dispute regarding the tax for 4Q06. The Department did not
10 accept the amounts reported on the 2Q07 return because it noted a computational error on the return,
11 and because petitioner's suppliers reported collecting an amount of prepaid sales tax from petitioner
12 that greatly exceeded the tax he reported as prepaid to the vendors.

13 We find that the amounts reported on petitioner's 2Q07 tax return are not reliable. Petitioner
14 has not presented any source documents to support the accuracy of the total and taxable sales reported
15 on the tax return. We note that the \$5,729 claimed sales tax reimbursement included in reported total
16 sales exceeds the \$4,355 computed sales tax due. In addition, petitioner's fuel vendors reported
17 prepaid sales tax collected from petitioner for that quarter of \$7,346, while his late return reported
18 prepaid sales tax of \$2,908. We conclude petitioner purchased more fuel than he reported, and we find
19 no basis for an adjustment to the determined tax.

20 **Issue 2:** Whether petitioner has established reasonable cause to be relieved of the failure-to-
21 file penalties. We conclude that he has not.

22 The determinations included penalties for failure to timely file tax returns. Petitioner
23 essentially argued that the penalties are not due because he timely mailed the subject returns, with
24 payment. However, not only do the Board's records not show that the returns were timely filed, the
25 records also fail to reflect the payments of \$2,569 or \$447 that were allegedly included with the
26 returns. We recognize that, if petitioner had timely mailed the returns with payments and the returns
27 had been lost in the mail, then the payments would also not have been received, so the fact that the
28 payments are not reflected in the Board's records does not automatically prove that the returns were

1 not timely mailed. However, in addition to effectively claiming that two different returns, mailed on
2 two different dates, were lost, petitioner has not even submitted evidence, such as a check register,
3 showing that he actually wrote the checks allegedly included with timely-mailed returns. We conclude
4 that the returns were not timely mailed, and that petitioner has not provided a basis for relief of the
5 penalties.

6 **Issue 3:** Whether petitioner has established that some or all of the interest that has accrued
7 should be relieved. We conclude that he has not.

8 After the appeals conference, petitioner submitted a request for relief of interest based on
9 having timely mailed the tax returns and payments at issue. As stated above, we conclude that the
10 returns and payment were not timely mailed, and petitioner has not provided any basis for relief of
11 interest. Accordingly, we recommend that petitioner's request for relief of interest be denied.

12 **OTHER MATTERS**

13 None.

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15 Summary prepared by Pete Lee, Business Taxes Specialist II
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