

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for Redetermination,)
 4 Administrative Protests, and Claims for Refund)
 4 Under the Sales and Use Tax Law of:)
 5)
 5 IBRAHIM SAID MEKHAIL,)
 6 dba Cyril Mobil) Account Number: SR AA 97-486418
) Case ID's 445466, 473541; Lakewood
 7)
 8 dba Mary's Mobile) Account Number: SR AP 97-022341
) Case ID 473538; Glendale
 9)
 9 dba Grace Mobil) Account Number: SR AA 100-000423
 10) Case ID's 445467, 473537; Long Beach
)
 11 dba Joy Mobile) Account Number: SR AA 100-637373
) Case ID 473539; Harbor City
 12)
 13 dba Blessing Mart & Service) Account Number: SR AA 100-348068
) Case ID's 445468, 473540; Downey
 14)
 14 dba Faith Mobil) Account Number: SR AP 100-145396
 15) Case ID 475481; Alhambra
)
 16 dba MK Chevron) Account Number: SR AS 18-723259
 17) Case ID's 475476, 524559; Los Angeles
)
 18 dba MKL Chevron Service) Account Number: SR AA 18-749904
) Case ID's 475478, 524544; Los Angeles
 19)
 20 Petitioner/Taxpayer/Claimant ("Petitioner")) Los Angeles County

21 Type of Business: Gasoline stations with mini-marts

22 Audit periods: Various between 1/1/05 – 12/31/07¹

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 26 ¹ The disputed amounts of tax established in the audits of the eight businesses considered in this consolidated summary
 27 range from \$77,182 to \$157,622, and the total of all eight disputed amounts is greater than \$500,000. However, while the
 28 issues are similar because all of the businesses are owned and operated by the same sole proprietor, the businesses are
 operated under separate seller's permits and the Notices of Determination have been issued under eight different seller's
 permit numbers. Thus, we find that the Board's action on these matters represents several decisions, none of which involve
 an amount in dispute in excess of \$500,000. Accordingly, we find that these appeals are not covered by Revenue and
 Taxation Code section (Section) 40, and it is not necessary to publish a summary decision on the Board's website.

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Cyril Mobil
SR AA 97-486418
Case ID's 445466, 473541

Mary's Mobil
SR AP 97-022341
Case ID 473538

<u>Item</u>	<u>Disputed Amounts</u>				<u>Disputed Amounts</u>	
Understated gasoline sales	\$1,532,223				\$1,875,737	
Understated taxable mini-mart sales	\$ 69,310				\$ 30,465	
Understated taxable repair shop sales	\$ 142,508					
	<u>Case ID 445466</u>		<u>Case ID 473541</u>		<u>Case ID 473538</u>	
	<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>4/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$20,633.44	\$2,063.34	\$119,353.49	\$11,935.36	\$157,261.74	\$15,726.19
Pre-D&R adjustment	+3,896.54	+389.65	0.00	0.00	0.00	0.00
Post-D&R adjustment	<u>0.00</u>	<u>-2,452.99</u>	<u>0.00</u>	<u>-11,935.36</u>	<u>0.00</u>	<u>-15,726.19</u>
Proposed redetermination, protested	<u>\$24,529.98</u>	<u>\$ 0.00</u>	<u>\$119,353.49</u>	<u>\$ 0.00</u>	<u>\$157,261.74</u>	<u>\$ 0.00</u>
Proposed tax redetermination	\$24,529.98		\$119,353.49		\$157,261.74	
Interest through 7/31/13	<u>15,245.64</u>		<u>69,357.83</u>		<u>91,158.00</u>	
Total tax and interest	\$39,775.62		\$188,711.32		\$248,419.74	
Payments	<u>3,077.00</u>		<u>0.00</u>		<u>3,511.00</u>	
Balance Due	<u>\$36,698.62</u>		<u>\$188,711.32</u>		<u>\$244,908.74</u>	
Monthly interest beginning 8/1/13	<u>\$107.26</u>		<u>\$596.77</u>		<u>\$768.75</u>	

Grace Mobil
SR AA 100-000423
Case ID's 445467, 473537

Joy Mobil
SR AS 100-637373
Case ID 473539

<u>Item</u>	<u>Disputed Amount</u>				<u>Disputed Amount</u>	
Understated gasoline sales	\$1,153,619				\$916,654	
Understated taxable mini-mart sales					\$ 18,879	
	<u>Case ID 445467</u>		<u>Case ID 473537</u>		<u>Case ID 473539</u>	
	<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>10/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$18,811.17	\$1,881.12	\$72,362.90	\$7,236.30	\$77,181.53	\$7,718.16
Pre-D&R adjustment	+970.55	+97.06	0.00	0.00	0.00	0.00
Post-D&R adjustment	<u>0.00</u>	<u>-1,978.18</u>	<u>0.00</u>	<u>-7,236.30</u>	<u>0.00</u>	<u>-7,718.16</u>
Proposed redetermination, protested	<u>\$19,781.72</u>	<u>\$ 0.00</u>	<u>\$72,362.90</u>	<u>\$ 0.00</u>	<u>\$77,181.53</u>	<u>\$ 0.00</u>
Proposed tax redetermination	\$19,781.72		\$72,362.90		\$ 77,181.53	
Interest through 7/31/13	<u>11,541.51</u>		<u>42,079.10</u>		<u>43,315.60</u>	
Total tax and interest	\$31,323.23		\$114,442.00		\$120,497.13	
Payments	<u>9,419.00</u>		<u>0.00</u>		<u>4,088.54</u>	
Balance Due	<u>\$21,904.23</u>		<u>\$114,442.00</u>		<u>\$116,408.59</u>	
Monthly interest beginning 8/1/13	<u>\$51.81</u>		<u>\$361.81</u>		<u>\$365.46</u>	

1		<u>Blessing Mart & Service</u>				<u>Faith Mobil</u>	
2		<u>SR AA 100-348068</u>				<u>SR AP 100-145396</u>	
		<u>Case ID's 445468, 473540</u>				<u>Case ID 475481</u>	
3	<u>Item</u>	<u>Disputed Amount</u>				<u>Disputed Amount</u>	
	Understated gasoline sales	\$1,067,648				\$1,615,135	
4		<u>Case ID 445468</u>		<u>Case ID 473540</u>		<u>Case ID 475481</u>	
5		<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>4/1/05 – 12/31/07</u>	
		<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
6	As determined	\$16,732.91	\$1,673.29	\$66,471.88	\$6,647.21	\$133,248.68	\$13,324.90
	Pre-D&R adjustment	+2,030.22	+203.03	0.00	0.00	0.00	0.00
	Post-D&R adjustment	<u>0.00</u>	<u>-1,876.32</u>	<u>0.00</u>	<u>-6,647.21</u>	<u>0.00</u>	<u>-13,324.90</u>
7	Proposed redetermination, protested	<u>\$18,763.13</u>	<u>\$ 0.00</u>	<u>\$66,471.88</u>	<u>\$ 0.00</u>	<u>\$133,248.68</u>	<u>\$ 0.00</u>
8	Proposed tax redetermination	\$18,763.13		\$66,471.88		\$133,248.68	
	Interest through 7/31/13	<u>12,371.31</u>		<u>39,071.87</u>		<u>77,975.63</u>	
9	Total tax and interest	<u>\$31,134.44</u>		<u>\$105,543.75</u>		<u>\$211,224.31</u>	
10	Monthly interest beginning 8/1/13	<u>\$93.82</u>		<u>\$332.36</u>		<u>\$666.24</u>	

11		<u>MK Chevron</u>				<u>MKL Chevron Service</u>	
12		<u>SR AS 18-723259</u>				<u>SR AS 18-749904</u>	
		<u>Case ID 475476</u>				<u>Case ID 475478</u>	
13	<u>Item</u>	<u>Disputed Amounts</u>				<u>Disputed Amounts</u>	
14	Understated gasoline sales	\$1,159,034				\$1,045,873	
15		<u>Case ID 475476</u>		<u>Case ID 475478</u>			
		<u>1/1/05 – 12/31/07</u>		<u>1/1/05 – 12/31/07</u>			
		<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>		
16	As determined	\$95,620.36	\$9,562.06	\$92,266.88	\$9,226.70		
	Add finality penalty	0.00	+9,562.04	0.00	+9,226.69		
17	Post-D&R adjustment	<u>0.00</u>	<u>-9,562.06</u>	<u>- 5,982.34</u>	<u>-9,824.94</u>		
18	Proposed adjusted determination, protested	<u>\$95,620.36</u>	<u>\$9,962.04</u>	<u>\$86,284.54</u>	<u>\$8,628.45</u>		
19	Proposed adjusted tax determination	\$95,620.36		\$86,284.54			
	Interest	27,151.97		23,981.43			
	Finality penalty	<u>9,562.04</u>		<u>8,628.45</u>			
20	Total tax, interest, and penalty	\$132,334.37		\$118,894.42			
	Payments	<u>132,334.37</u>		<u>102,293.63</u>			
21	Balance Due	<u>\$ 0.00</u>		<u>\$ 16,600.79</u>			

22 This matter was scheduled for Board hearing in October 2012, but was postponed at
 23 petitioner's request to allow time for him to submit additional documents to the Sales and Use Tax
 24 Department (Department). It was rescheduled for Board hearing in February 2013, but was deferred at
 25 the request of the Department to allow time to review the additional documents and to do a reaudit if
 26 warranted. As explained under "Other Matters," we recommend no adjustments based on those
 27 documents.
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UNRESOLVED ISSUES

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2 **Issue 1:** Whether further adjustments are warranted to the measure of understated gasoline
3 sales. We conclude that no further adjustments are warranted.

4 Petitioner owns eight gasoline stations with mini-marts. The Department audited each location
5 and issued notices of determination. It compared petitioner's recorded gasoline purchases with
6 reported gasoline sales, computed negative book markups of -0.0071 to -0.0807, which means
7 recorded gasoline purchases were greater than reported gasoline sales, and concluded that petitioner's
8 reported gasoline sales were understated. For each location, the Department computed the number of
9 gallons purchased using the amounts of sales tax reimbursement petitioner prepaid to his gasoline
10 vendors and the applicable tax rate. It then established petitioner's gasoline sales using selling prices
11 obtained from the U. S. Department of Energy (DOE) for gasoline sold in the Los Angeles area. The
12 Department weighted the DOE selling prices for regular, mid-grade, and premium grades of gasoline
13 by the December 2007 gasoline purchase ratios for each location to compute a single weighted average
14 selling price per quarter per location. It then adjusted those prices by the observed variances between
15 the DOE price and petitioner's recorded selling prices, which ranged from 17 cents less to 8 cents more
16 per gallon than the DOE prices, and removed the sales tax reimbursement included to compute audited
17 average gasoline selling prices. It applied the audited selling prices to the audited gallons of gasoline
18 purchased to compute audited gasoline sales, compared the audited gasoline sales to recorded/reported
19 gasoline sales, and established understatements of gasoline sales for each location.

20 Petitioner contended that the average gasoline selling prices and gallons of gasoline purchased
21 should be computed on a basis more frequent than quarterly, the purchase ratios of gasoline by grade
22 should be established throughout the audit period rather than using the ratio only from December 2007,
23 and the gallons of gasoline purchased should be computed directly from purchase invoices rather than
24 by dividing the sales tax prepayments to vendors by the sales tax prepayment rates. We recommended
25 that the Department prepare readuits if petitioner provides the relevant calculations and documentation.

26 Subsequently, petitioner provided analyses, calculations, and documentation only related to
27 MKL Chevron Service, in which he compiled gasoline purchases, analyzed the DOE selling prices,
28 and computed gasoline sales on a weekly basis. The Department generally accepted petitioner's

1 analysis, but did not allow for an estimated 8 percent adjustment for “location” or “neighborhood.” In
2 sum, the Department reduced MKL Chevron Service’s understated gasoline sales by \$72,513, from
3 \$1,118,386 to \$1,045,873. The Department declined to reduce the audited gasoline sales of
4 petitioner’s seven other stations due to the lack of documentation.

5 In a letter dated May 10, 2012, petitioner indicated that he “agreed to compile [DOE pricing]
6 information for three stations under reaudit and apply the methodology to the balance of the locations.”
7 However, there is no evidence that petitioner compiled his agreed-to information for two other stations.
8 More importantly, petitioner’s action does not follow our recommendation (i.e. that petitioner provide
9 selling price analyses, purchase ratio calculations, and actual gasoline purchase invoices *for each*
10 *station* to compute gasoline sales on a basis more frequent than quarterly). Nor has he supported his
11 8 percent adjustment of audited gasoline sales for “location” or “neighborhood” in his calculations for
12 the MKL Chevron Service reaudit. We find that no further adjustments are warranted.

13 **Issue 2:** Whether further adjustments are warranted to the measure of understated taxable mini-
14 mart sales. We conclude that no further adjustments are warranted.

15 The Department tested the mini-mart merchandise purchases for the fourth quarter 2007 at all
16 of the stations, found that at five of the stations the recorded taxable mini-mart book markups of 40 to
17 42 percent were adequate, and accepted the reported taxable mini-mart sales for those locations. With
18 respect to the other three stations, Cyril Mobil, Mary’s Mobil, and Joy Mobil, the Department found
19 that the recorded mini-mart purchases were understated by 16, 21, and 19 percent, respectively; that
20 the taxable purchase ratios were 73, 72, and 53 percent, respectively; that the audited taxable mini-mart
21 purchases exceeded the reported taxable mini-mart sales at Cyril Mobil and Mary’s Mobil; and that the
22 13.6 percent taxable mini-mart book markup at Joy Mobil was lower than expected for this type of
23 business. The Department concluded that the reported taxable mini-mart sales at these three locations
24 were understated, and decided to establish the taxable mini-mart sales by markup. It compiled
25 recorded mini-mart purchases, applied the applicable taxable purchases ratio to compute taxable
26 purchases, and applied the audited understatement error rate to the taxable purchases to compute
27 audited taxable mini-mart purchases. It reduced the taxable mini-mart purchases by one percent for
28 pilferage but none for self consumption (because petitioner indicated there was none) to compute

1 taxable purchases subject to markup, applied an estimated 33.33 percent markup to the adjusted
2 taxable purchases to compute taxable mini-mart sales, and reduced the taxable mini-mart sales for
3 exempt sales of taxable merchandise paid for with food stamps to compute adjusted taxable mini-mart
4 sales. It compared the adjusted taxable mini-mart sales with reported taxable mini-mart sales and
5 established understatements of taxable mini-mart sales for each of the three locations.

6 Petitioner contends that his recorded taxable mini-mart sales include sales tax reimbursement.

7 We note that if petitioner's contention were correct, the measure of tax for unreported taxable
8 mini-mart sales would increase for these three locations, but petitioner would benefit in the audits of
9 the five other locations. Petitioner was noncommittal when asked if he agreed with the 33.33 percent
10 estimated markup used to compute taxable mini-mart sales. We find that the 33.33 percent estimated
11 markup is reasonable because it is within the 25 to 40 percent range of markups expected for this type
12 of business. However, we recommended that during the reaudits petitioner provide documentation to
13 show that his recorded mini-mart sales include tax reimbursement, and to support a lower markup.

14 Petitioner has not provided documentation to show that his recorded mini-mart sales include
15 tax reimbursement, or to support a lower markup. Thus, we find that no adjustments are warranted.

16 **Issue 3:** Whether further adjustments are warranted to the measure of understated taxable
17 repair shop sales. We conclude that no further adjustments are warranted.

18 Petitioner operates a repair shop at Cyril Mobil. The Department noted that the amount of
19 petitioner's reported taxable repair shop sales was much less than his recorded repair shop purchases
20 for the fourth quarter 2007. It concluded that the reported taxable repair shop sales were understated,
21 and decided to establish the taxable repair shop sales by markup. The Department compiled recorded
22 repair shop purchases, reduced those purchases by one percent for pilferage but none for self
23 consumption (because petitioner indicated there was none) to compute repair shop purchases subject to
24 markup, and applied an estimated 50 percent markup to the adjusted repair shop purchases to compute
25 audited repair shop sales. It compared the audited repair shop sales with reported taxable repair shop
26 sales and established understatements of taxable repair shop sales for Cyril Mobil.

27 Petitioner contended that his recorded repair shop sales include sales tax reimbursement, and
28 that the recorded repair shop purchases are overstated. Petitioner was noncommittal when asked if he

1 agreed with the 50 percent estimated markup used to compute taxable repair shop sales. We
2 recommended that during the reaudit petitioner provide documentation to show that his recorded repair
3 shop sales include tax reimbursement, and to support a lower markup. We rejected petitioner's
4 proposal that he provide copies of purchase invoices of repair shop merchandise to determine a lower
5 amount of such purchases. Instead, we asked petitioner to analyze the recorded repair shop purchases
6 and identify any entries that represent purchases other than repair shop merchandise.

7 Petitioner has not provided documentation to show that his recorded repair shop sales include
8 tax reimbursement, or to support a lower markup. Nor has he identified any recorded repair shop
9 purchases that represent purchases other than repair shop merchandise. Therefore, we find that no
10 adjustments are warranted.

11 **Issue 4:** Whether petitioner should be relieved of the finality penalties. We conclude that relief
12 is not warranted.

13 The notices of determination for MK Chevron and MKL Chevron Service were both issued on
14 November 13, 2008, and when no payments were received or petitions filed by December 13, 2008,
15 became final with finality penalties accruing on that date. Subsequently, petitioner filed late petitions
16 for redetermination (accepted as administrative protests) on December 17, 2008, and paid the tax
17 portion of the determinations in full in January 2009. After the appeals conference, petitioner filed
18 requests for relief of the finality penalties, asserting that his outside accountant was negligent during
19 the audit and claiming that the audit liabilities would be greatly reduced in the post-conference
20 reaudits.

21 We note that petitioner has filed timely petitions for six of the eight audits at issue, indicating
22 that he knew how to file timely petitions. While the taxes for these two audits have been paid,
23 petitioner has not provided any explanation for his failure to pay the determined taxes timely. We
24 conclude that petitioner's failure to file timely petitions and failure to timely pay the tax portion of
25 these determinations were not due to circumstances beyond petitioner's control, and therefore find that
26 relief of the finality penalties is not warranted.

27 **Issue 5:** Whether the claims for refund should be granted in whole or in part. We conclude that
28 the claims for refund should be denied.

1 After the appeals conference, on February 3, 2010, petitioner filed claims for refund of
2 \$140,462.12 paid in January and March 2009 for MK Chevron (Case ID 524559), and \$92,266.88 paid
3 in January 2009 for MKL Chevron Service (Case ID 524544).² Since these claims were filed more
4 than six months after the payments and more than six months after the determinations became final,
5 they are timely only to the extent that they were filed within three years from the last day of the month
6 following the close of the applicable quarterly period. (Rev. & Tax. Code, § 6902.) Thus, the claims
7 are timely for payments made for the period January 1, 2007, through December 31, 2007, but not for
8 payments made for earlier periods. Since we find that there has been no overpayment on either
9 account for 2007 (or, indeed, for the entire audit period of each account), we recommend that both
10 claims be denied.

11 **RESOLVED ISSUE**

12 The Department imposed a negligence penalty in each determination, but we concluded that
13 petitioner was not negligent. Thus, all negligence penalties have been deleted.

14 **OTHER MATTERS**

15 As noted above, petitioner provided documents to the Department after these matters were first
16 scheduled for Board hearing in October 2012. One of petitioner's arguments was that the audited
17 amounts of gallons purchased, computed using the amounts of sales tax prepaid to petitioner's vendors
18 and the applicable prepayment rates, were excessive. Petitioner asserted that the numbers of gallons
19 purchased should be based on available purchase invoices. Among the documents provided were
20 worksheets listing the number of gallons delivered to each station and purchase invoices to support the
21 worksheets. The Department found some discrepancies, both positive and negative, between the
22 purchases listed on the worksheets and the amounts compiled by the Department from the invoices
23 provided. The Department also compared the purchases shown on the worksheets and audited
24 purchases and found some small differences. However, the Department was unable to verify whether
25 the purchase invoices were complete. In fact, the Department found evidence that some invoices were

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27 ² Payments towards the MK Chevron liability totaled about \$8,128 more than due on that account, so the difference was
28 transferred to the MKL Chevron account.

1 missing. The Department noted that the audited numbers of gallons of fuel purchased were based on
2 amounts of prepaid sales tax claimed by petitioner on his sales and use tax returns, and the sales tax
3 prepayments were verified using vendor statements. The Department argues that the information used
4 to establish the audited numbers of gallons is more reliable than the information provided recently by
5 petitioner. We share the Department's concern about whether the available purchase invoices are
6 complete. The worksheets and purchase invoices were provided about five years after the end of the
7 audit periods, and there is no way to determine whether all purchases have been accounted for.
8 Further, the amounts of prepaid sales tax used to compute the audited numbers of gallons purchased
9 were based principally on amounts he claimed on returns. Petitioner has not documented, or identified,
10 errors in those amounts claimed on his returns, and the amounts have been verified using the vendor
11 statements, which provide objective confirmation of accuracy. Accordingly, we find no adjustment is
12 warranted to the audited numbers of gallons of fuel purchased.

13 Petitioner also argued that the percentages of purchases of fuel in various grades should not be
14 computed using only the percentages shown on petitioner's 2007 sales report. The recently provided
15 documentation included evidence from which percentages could be computed for a part of 2005. The
16 Department used the new percentages to weight the average selling prices of gasoline and computed
17 taxable sales approximately \$15,000 higher than the audited amounts of sales. The Department noted
18 that the additional sales represent less than 1 percent of the audited taxable sales assessed, and it does
19 not intend to assert an increase in the determined understatements.

20 Thus, we find that no adjustments are warranted based on the additional documents petitioner
21 provided after these matters were first scheduled for Board hearing in October 2012.

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