

**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: )  
RRS JOHAL CORPORATION, dba ) Account Number SR CH 97-939967  
Pittsburg Chevron ) Case ID 511276<sup>1</sup>  
Petitioner )  
Pittsburg, Contra Costa County

Type of Business: Gas station with mini-mart

Audit period: 01/01/05 – 03/31/08

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Understatement of reported taxable sales	\$600,396		
As determined		\$54,048.94	\$5,404.88
Post-D&R adjustment		<u>00.00</u>	<u>- 5,404.88</u>
Proposed redetermination		\$54,048.94	<u>\$ 00.00</u>
Less concurred		<u>- 4,516.21</u>	
Balance, protested		<u>\$49,532.73</u>	
Proposed tax redetermination		\$54,048.94	
Interest through 09/30/13		<u>29,217.69</u>	
Total tax and interest		\$83,266.63	
Payments		<u>- 10,000.00</u>	
Balance Due		<u>\$73,266.63</u>	
Monthly interest beginning 10/01/13		<u>\$ 220.24</u>	

**UNRESOLVED ISSUE**

**Issue:** Whether adjustments are warranted to the understatement of reported taxable sales. We find no further adjustment is warranted.

<sup>1</sup> Petitioner has also filed two claims for refund for payments made against the determination, with a total amount of overpayment claimed of \$3,000, which are mentioned in the D&R. The case ID's for the claims for refund (476967 and 633933) are also listed in the caption of the D&R. However, since \$3,000 is less than the amount determined for the first quarter of the audit period, the claims for refund are not ripe for consideration and are not addressed herein.

1           Petitioner has operated a gas station and mini-mart since November 2001. For audit, petitioner  
2 provided sales and use tax returns, federal income tax returns, income statements, gasoline purchase  
3 invoices for the audit period, mini-mart merchandise purchase invoices for 2007, and sales tax  
4 worksheets for the first quarter 2008 (1Q08).

5           The Sales and Use Tax Department (Department) found that the amount of taxable sales  
6 recorded on the sales tax worksheets for 1Q08 exceeded reported taxable sales for that quarter by  
7 \$72,844. Since sales tax worksheets were not provided for the remainder of the audit period, the  
8 Department decided to establish audited taxable sales for 2005, 2006, and 2007 on a markup basis.

9           To establish the audited taxable sales of fuel, the Department computed a markup for fuel of  
10 6.21 percent, and added the markup to recorded fuel purchases, which the Department compiled from  
11 purchase invoices. As explained in the D&R, the Department and petitioner agreed at the appeals  
12 conference that the purchases of fuel should be adjusted for the cost of self-consumed fuel of \$3,421  
13 per quarter to establish the audited cost of fuel sold. However, in the post-D&R reaudit, instead of  
14 reducing fuel purchases before it added the audited markup, the Department added the markup to  
15 unadjusted fuel purchases, and then reduced that amount by the retail value of self-consumed fuel of  
16 \$3,632 per quarter.<sup>2</sup> Based on its review of additional evidence provided at and after the conference,  
17 and during the post-D&R reaudit, the Department reduced the markup to 6.01 percent,<sup>3</sup> which resulted  
18 in audited fuel sales of \$6,672,434 for the audit period. After the reduction for the retail value of self-  
19 consumed fuel, the adjusted amount of audited fuel sales is \$6,628,845.

20           To establish audited taxable sales of mini-mart merchandise for 2005, 2006, and 2007 in the  
21 post-D&R reaudit, the Department used petitioner's purchase summaries and purchase invoices to  
22 establish audited purchases of taxable mini-mart merchandise for the audit period. It reduced the  
23 purchase amounts by 1 percent for pilferage and by an estimated cost of self-consumed merchandise of  
24 \$451 per quarter, and then added the audited markup of 32.66 percent, computed in shelf tests, to  
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26 <sup>2</sup> The Department then used the audited markup to compute the corresponding cost of the self-consumed fuel of \$3,427 per  
27 quarter, which it used as the cost subject to use tax.

28 <sup>3</sup> The D&R recommended a markup for fuel of 6.18 percent, but petitioner provided additional information during the  
reaudit that the Department used to compute a markup of 6.01 percent, and we concur with that additional reduction.

1 establish audited taxable mini-mart sales of \$602,330. It then compiled purchases of propane from  
2 purchase invoices for the 2005, 2006, and 2007, and added an audited markup of 44.34 percent,  
3 computed in a shelf test, to compute audited sales of propane of \$280,138 for those three years.<sup>4</sup> The  
4 Department totaled audited fuel sales, audited taxable mini-mart sales, and audited propane sales to  
5 establish audited taxable sales of \$7,511,313 ( $6,628,845 + 602,330 + 280,138$ ) for the years 2005,  
6 2006, and 2007. The Department concluded that reported taxable sales for 1Q07 were substantially  
7 accurate because reported taxable sales of \$634,966 exceeded the audited amount of \$626,243. For the  
8 remainder of the years 2005, 2006, and 2007, audited taxable sales of \$6,885,070 exceeded reported  
9 taxable sales of \$6,357,518 by \$527,552. The Department added the audited difference between  
10 recorded and reported taxable sales of \$72,844 for 1Q08 to establish the understatement of reported  
11 taxable sales for the audit period of \$600,396.<sup>5</sup>

12         Petitioner contends that the audited markup of 6.18 percent for fuel, computed by the  
13 Department after the conference, is excessive. As noted above, petitioner provided additional records  
14 during the post-D&R reaudit (evidence of selling prices and costs for June 2006), and the Department  
15 further reduced the audited markup for fuel to 6.01 percent. However, petitioner argues that the selling  
16 prices were markedly lower after the gas station had been closed in February and March 2005. As  
17 evidence, petitioner provided three sales receipts, dated May 19, 2005, May 29, 2005, and August 28,

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19 <sup>4</sup> The procedure used in the post-D&R reaudits differed from that used in the audit, which is explained in the D&R.  
20 Although the D&R did not recommend a revision in the audit procedure for these two merchandise categories, petitioner  
21 provided information during the post-D&R reaudits to establish audited purchases for the years 2005 and 2006, and the  
22 Department concluded that the revised audit procedure was more reliable. We concur with the Department's conclusion.  
23 <sup>5</sup> Although the Department had computed an understatement of reported taxable sales of \$565,264 before the D&R was  
24 issued, the D&R recommended a reaudit. In the first post D&R reaudit, the audited amount of gasoline sales was reduced  
25 by about \$18,000, but the revised method of computing audited taxable minimart and propane sales resulted in an increase  
26 in the total of those two amounts of about \$54,000. Also, in the Department's pre-D&R computations, it accepted reported  
27 taxable sales as substantially accurate for two quarters (because reported taxable sales exceeded the audited amounts).  
28 However, in the first reaudit, there was an audited understatement in one of those quarters. In total, the amount of audited  
taxable sales increased from \$565,264 to \$572,817 in the first reaudit. In the second post-D&R reaudit, various  
computation errors were corrected, the most significant of which was an erroneous computation of the ending fuel  
inventory for 2007, which had overstated the ending inventory of premium grade fuel, thus understating audited fuel sales  
in the first reaudit by \$27,579. Thus, the two post-D&R reaudits resulted in an increase in the audited understatement of  
reported taxable sales from \$565,264, recommended in the D&R, to \$600,396. While that amount was less than the  
\$644,144 established in the audit, the Department also established a separate audit item in the post-D&R reaudits for the  
unreported taxable cost of self-consumed merchandise of \$46,536. Accordingly, the total understatement of reported  
taxable measure increased from \$644,144 to \$646,932. The Department did not increase the determined understatement of  
tax because the time for asserting an increase had expired. (Rev. & Tax. Code, § 6563.) Accordingly, the determined  
amount of tax has not been adjusted.



1 concerned about the incomplete records, we find that the percentage of error is not unusually large for  
2 a taxpayer that has not been audited previously. Accordingly, we recommend that the negligence  
3 penalty be deleted.

4 **OTHER MATTERS**

5 None.

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

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**MARKUP TABLE  
Gasoline**

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentage developed	6.01%
Self-consumption allowed in dollars	\$3,417 per quarter
Self-consumption allowed as a percent of taxable purchases	0.65%
Pilferage allowed in dollars	None

**MARKUP TABLE  
Taxable Mini-mart Sales**

Percentage of taxable vs. nontaxable purchases	72.78%*
Mark-up percentages developed	32.66%
Self-consumption allowed in dollars	\$451 per quarter
Self-consumption allowed as a percent of taxable purchases	1.17%
Pilferage allowed in dollars	\$4,641 for the audit period
Pilferage allowed as a percent of taxable purchases	1%

\* The Department segregated purchases for the 2Q07 and computed a taxable to total percentage of mini-mart purchases of 72.78 percent. However, that percentage was not used to compute audited purchases of taxable mini-mart merchandise. Instead, the Department used petitioner's purchase records (either purchase summaries or purchase invoices) for the remainder of the audit period to establish audited purchases of taxable mini-mart merchandise.

**MARKUP TABLE  
Propane Sales**

Percentage of taxable vs. nontaxable purchases	100%
Mark-up percentage developed	44.34%
Self-consumption allowed in dollars	None
Pilferage allowed in dollars	None