

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)

5 RASHID & SONS, INC.)

Account Number SR AS 100-417411¹
Case ID 533211

6 Petitioner)

Los Angeles, Los Angeles County

7 Type of Business: Gas station with mini-mart

8 Audit period: 01/01/07 – 12/31/09

9 Item Disputed Amount

10 Unreported taxable sales \$4,416,650

11 Negligence penalty \$ 21,218²

Tax

Penalty

12 As determined \$274,806.53 \$27,480.68

13 Post-D&R adjustment -62,622.66 -6,262.25

14 Proposed redetermination \$212,183.87³ \$21,218.43

15 Proposed tax redetermination \$212,183.87

16 Interest through 02/28/14 106,532.10

17 Negligence penalty 21,218.4318 Total tax, interest, and penalty \$339,934.4019 Monthly interest beginning 03/01/14 \$1,060.92

20 UNRESOLVED ISSUES

21 **Issue 1:** Whether additional adjustments are warranted to the amount of unreported taxable
22 sales. We find no further adjustments are warranted.23 Petitioner has operated a gasoline station with a mini-mart since 2004. Petitioner provided no
24 books and records for audit. After the appeals conference, petitioner provided cash register tapes that
25 the Sales and Use Tax Department (Department) used to establish petitioner's gasoline selling prices26 ¹ Separate Board Hearing Summaries have been prepared for three related appeals: Three Four R, Inc., SR AS 100-729051,
27 Case ID 532577; Z & R Oil Corporation, SR AS 100-496459, Case ID 532457; and RD 786 Enterprises Inc., dba Century
Gas, SR AS 100-502649, Case ID 533217.28 ² In the D&R, we calculated that the negligence penalty would be reduced to \$21,267.30. In the reaudit, this negligence
penalty was reduced slightly to \$21,218.43.³ The proposed redetermined amount of tax is net of the unclaimed sales tax prepayments of \$169,165.

1 for five separate days during the audit period. The Department compared these gasoline selling prices
2 to the statewide average gasoline selling prices posted on the Department of Energy's (DOE) website
3 to establish a price differential for gasoline. The Department found petitioner's gasoline selling prices
4 were lower than the DOE prices. Given the lack of records, the Department reduced the DOE gasoline
5 selling prices by the price differential to establish audited gasoline selling prices for each quarterly
6 period in the audit. The Department divided the prepaid sales tax reported to the Board by petitioner's
7 fuel suppliers by the applicable prepaid sales tax rates to establish the total gallons of gasoline and
8 diesel fuel purchased. The Department established the number of gallons sold by reducing the total
9 gallons of gasoline purchased by one percent to allow for theft. Using ratios obtained from the DOE
10 website, the Department segregated audited gallons of gasoline sold by gasoline grade. For each
11 quarterly period in the audit, the Department used the audited gasoline selling prices and the number of
12 gallons sold to compute audited taxable sales of gasoline for the audit period. Since petitioner
13 provided no documentation showing its sales of mini-mart merchandise, the Department visited the
14 business and found similar amounts of taxable and nontaxable merchandise inside the mini-mart.
15 Therefore, the Department determined that petitioner's taxable sales of mini-mart merchandise equaled
16 its claimed exempt food sales, which was \$166,741 for the audit period. Overall, in the post-D&R
17 reaudit, the Department established audited taxable sales that exceeded reported taxable sales by
18 \$4,416,650.

19 Petitioner contends audited purchases of gasoline are overstated. Petitioner also contends an
20 allowance of 10 percent should be allowed for theft of gasoline. Further, petitioner asserts it is entitled
21 to a credit for bad debts on taxable sales. Petitioner provided no documentary evidence to support its
22 contentions. Thus, we reject petitioner's contentions, and we recommend no additional adjustments.

23 **Issue 2:** Whether petitioner was negligent. We conclude that it was.

24 The Department imposed the negligence penalty because petitioner provided no books and
25 records (except for the cash register tapes provided after the appeals conference) and because the
26 understatement was large. Petitioner contends it cooperated fully with the Department during the
27 audit, and thus was not negligent. Petitioner provided no specific reasons for its failure to provide
28 books and records. We find that petitioner's failure to provide any accounting records whatsoever is

1 evidence of negligence and that the penalty was properly applied, even though petitioner had not been
2 audited previously.

3 **OTHER MATTERS**

4 None.

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7 Summary prepared by Ted Matthies, Business Taxes Specialist III
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