CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of:	
FARAMARZ S. RAZI and SIDIG HAMIDI dba Concord Olympia/Arco Food Mart	Account Number: SR CH 100-423257 Case ID 475347
Petitioner	Concord, Contra Costa County

Type of Business: Gasoline station with a mini-market

Audit Period: 01/01/05 – 03/31/08

Item	Amounts in Dispute
Differences recorded sales and reported sales	$674,246
Additional unreported sales of gasoline	$155,084
Interest	Unspecified

	Tax	Penalty
As determined	$68,922.95	$6,892.31
Adjustment: Appeals Division	-611.16	-6,892.31
Proposed redetermination, protested	$68,311.79	$0.00

Proposed tax redetermination	$68,311.79
Interest through 9/30/10	23,184.27
Total tax and interest	$91,496.06
Monthly interest beginning 10/1/10	$398.49

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the unreported taxable sales. We recommend no further adjustments.

Petitioner operates a gasoline station with a car wash and mini-mart. One of the partners, Mr. Razi, had previously operated the business as a sole proprietorship under seller's permit number SR CH 21-828482. The sole proprietorship was last audited for the period January 1, 1993, through March 31, 1996, and the audit disclosed no deficiency.

During the audit at issue here, the Sales and Use Tax Department (Department) found that reported total sales were based on amounts recorded in petitioner's sales journals. The sales of mini-mart merchandise recorded in the journal were based on daily sales reports generated by a

STATE BOARD OF EQUALIZATION SALES AND USE TAX APPEAL computerized cash register system. For sales of gasoline, petitioner computed the daily sales amounts posed in the sales journals by multiplying the gallons of gasoline sold from the daily sales reports by the daily sales price. The Department compared total recorded sales of gasoline and total sales of mini mart merchandise for 2006 and 2007 with their respective recorded costs, and found that the gasoline markups were 3.12 and 3.17 for 2006 and 2007 respectively, and mini mart merchandise markups were 23.39 percent and 24.40 percent for 2006 and 2007, respectively. The Department accepted these markups as reasonable.

To establish recorded taxable sales of mini-mart merchandise, the Department divided the recorded sales tax reimbursement collected for sales of mini-mart merchandise by the applicable tax rate. It then totaled recorded taxable mini-mart sales and recorded gasoline sales to establish recorded taxable sales of $24,110,097, which exceeded reported taxable sales of $23,428,443 by $681,654). In our Decision and Recommendation (D&R), we noted an error in the Department's computations and recommended a reduction of $7,408, from $681,654 to $674,246.

As noted above, the gasoline sales recorded in the sales journal represent calculated amounts rather than amounts recorded on the cash register. Based on its review of the records for December 2007, the Department found that the recorded gasoline sales computed by petitioner were less than amounts recorded on the computerized cash register system by 0.66 percent, and the differences each day represented $0.03 per gallon for one day of the month and $0.02 per gallon for the remainder of the month. The Department concluded that recorded sales of gasoline were understated and applied the 0.66 percent of error to the gasoline sales recorded sales in the sales journals for the audit period to establish an understatement of recorded taxable sales of gasoline of $155,084. Additionally, the Department examined petitioner's reported sales tax prepaid to distributors on purchases of gasoline with recorded prepaid sales tax and found that petitioner understated the deduction it was entitled to for sales tax prepaid to its vendor by $108. This amount was allowed as an offset against the audit liability.[1]

[1] The D&R shows this amount as disputed. However, petitioner does not seek a larger amount and disputes this credit only because it asserts that it reported the correct tax due (and thus does not have any deficiencies or credits). We thus do not show this amount as disputed and do not discuss it further.

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SALES AND USE TAX APPEAL

Petitioner contends that all reported amounts were accurate. Petitioner asserts there could not be any more taxes due since it collected and paid millions in federal and state excise taxes and sales taxes. Mr. Razi noted that the Department had accepted his returns as substantially accurate in the most recent audit of the sole proprietorship. He asserted that, since he prepared returns for the partnership using the same procedures he had used to prepare returns for the sole proprietorship, there should not be any errors in returns filed for the current audit period.[2] Petitioner also disputes the audited understatement of recorded gasoline sales. Petitioner asserts it is not reasonable to apply the percentage of difference for one month between gasoline sales recorded on the sales journals and amounts recorded on the daily sales reports generated by the computerized cash register system to establish a difference for the audit period. Petitioner asserts that the differences were the result of changes in the sales prices for gasoline that occurred each day and alleges that a similar examination of recorded gasoline sales for all 39 months in the audit period would not show any discrepancy, because the differences would balance out over time.

With respect to petitioner's argument that all reported amounts were accurate, we have reviewed the audit workpapers and have identified no errors other than the adjustment which we recommended in our D&R. The Department has established a difference between recorded and reported taxable sales, and petitioner has not shown that the amounts recorded in its own records were overstated. Accordingly, we recommend no further adjustment to the audited difference between recorded and reported taxable sales.

With respect to the contention that there was no understatement of recorded gasoline sales, we are not persuaded by petitioner's assertion that the difference between sales of gasoline recorded on petitioner's cash register system and sales of gasoline recorded in the sales journal was due to reductions in the sales prices by $0.02 per gallon every day of the month tested. We have reviewed the historical average retail prices for gasoline in California shown on the website for the U. S. Department of Energy, and found that the average retail prices for gasoline declined from $3.408 per gallon to

[2] In a letter dated November 18, 2009, Mr. Razi conceded that it did appear there were some mistakes in recording or reporting procedures, but he stated his review of his computer records and documents did not reveal any consistent errors. Mr. Razi wrote that he would have his calculations reviewed by an outside source to avoid any problem in the future.

$3.307 per gallon[3] between the week ending December 3, 2007, and the week ending December 24, 2007 (four weeks). For the week ending December 31, 2007, the average retail price increased to $3.346 per gallon. Since statewide average retail prices for gasoline were declining for most weeks during the test month, it seems likely that petitioner did reduce its sales prices during the month. However, the average retail price for gasoline in California only declined by $0.101 per gallon ($3.408 - $3.307 = $0.101) over four weeks, and not by $0.02 per gallon every day. Therefore, petitioner's contention that the understatement in recorded sales of gasoline of $0.02 per gallon every day in the test month can be explained by price changes is not supported by the available evidence, and does not seem reasonable. Moreover, we consider the daily sales reports based on the cash register system to be the best information available regarding the gasoline sales, and petitioner has not explained why the amounts recorded on the cash register should be disregarded.

With respect to petitioner's objection to projecting the error rate generated by a test of one month to recorded gasoline sales for the audit period, we find that the records support the conclusion that the error is consistent throughout the audit period. Comparing audited sales of gasoline for 2006 and 2007 with recorded costs of gasoline sold computed markups of 3.80 percent and 4.39 percent for 2006 and 2007. Although those markups are slightly higher than the respective markups generated from comparing recorded gasoline sales and cost of sales, the markups are still well within the range of markups expected for sales of gasoline. Additionally, the Department found that petitioner's net bank deposits exceeded reported total sales by an amount in excess of the audited understatement of reported taxable sales. That difference offers secondary support for the audit findings. Moreover, petitioner has not provided any records to show that recorded taxable sales were accurately recorded in other months of the audit period.[4] In the absence of such records, and taking into account all of the evidence available, we find that it is reasonable to apply the percentage of error from the one-month test to recorded sales of gasoline for the entire audit period.

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[3] These were the average prices shown for all grades and all formulations of gasoline.

[4] The Department was unable to verify the accuracy of gasoline sales recorded in the sales journal for earlier periods in the audit period because there were no daily sales reports or cash register tapes showing gasoline sales for any period prior to October 2007.

Issue 2: Whether relief from interest is warranted. We find that relief is not warranted.

Interest may be relieved under only very narrow circumstances: when the failure to make a timely return or payment was due to a disaster, unreasonable error or delay by a Board employee, or reasonable reliance on written advice from the Board. (Rev. & Tax. Code, §§ 6593, 6593.5, subd. (a), 6596, subd. (a).) A person requesting relief of interest must file with the Board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief. (Rev. & Tax. Code, §§ 6593, 6593.5, subd. (c), 6596, subd. (c)(2).) Not only has petitioner not provided a statement signed under penalty of perjury as required for us to consider relief of interest, but we are also unaware of any facts that come within the provisions authorizing relief of interest. We conclude that relief from interest is not warranted.

RESOLVED ISSUE

The Department found that petitioner did not exercise due care in preparing returns and maintaining adequate records for sales and use tax purposes and thus it imposed a negligence penalty. We note, however, that the understatement found in the audit was 3.54 percent of reported taxable sales, the books and records were substantially complete, and the book markups computed by the Department in its preliminary review of the records appeared reasonable. Petitioner initially did not concede errors in compiling returns, but later admitted to some errors which it immediately remedied by changing its procedures, to avoid future problems. Based on the foregoing, we find that petitioner was not negligent and that the negligence penalty should be deleted.

OTHER DEVELOPMENTS

None.

Summary prepared by Rey Obligacion, Retired Annuitant