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:

SHEAKH SAHIB,
dba Airport Shell

Petitioner

Account Number: SR BH 100-332684
Case ID 457738

South San Francisco, San Mateo County

Type of Business: Gas station and mini-mart

Audit period: 7/1/04 – 6/30/07

Item	Disputed Amount
Understated gasoline sales	$610,526

	Tax	Penalty
As determined	$115,179.28	$11,517.94
Post D&R adjustments	- 1,156.32	-11,517.94
Proposed redetermination	$114,022.96	$ 0.00
Less concurred	- 63,654.56	
Balance, protested	$ 50,368.40	
Proposed tax redetermination	$114,022.96	
Interest through 11/30/12	64,146.73	
Total tax and interest	$178,169.69	
Payments	5,775.02	
Balance Due	$172,394.67	
Monthly interest beginning 12/1/12	$541.24	

UNRESOLVED ISSUE

Issue 1: Whether petitioner has established that further reductions to the audited understatement of taxable gasoline sales are warranted. We conclude that he has not.

Petitioner reports his taxable sales from monthly computerized sales summary reports (P&L's). The Sales and Use Tax Department (Department) compared petitioner's recorded gasoline sales with the gasoline cost of goods sold recorded on his P&L's for the third quarter 2005 (3Q05) through 2Q07 and computed a $60,088 gross loss resulting in a book markup of -1.31 percent. Since the Department did not accept that petitioner would consistently sell gasoline at or below cost, it concluded that the gasoline sales recorded on the P&L's were understated and decided to establish gasoline sales by alternative means. The Department multiplied the number of gallons of gasoline that petitioner's vendor reported selling to petitioner during the audit period by adjusted statewide average retail gasoline prices. Petitioner's taxable gasoline sales were computed to be $6,445,038[1] and compared with reported taxable gasoline sales of $5,834,512, resulting in a $610,526 understatement.

Petitioner contends that the number of gallons of gasoline used in the computation of taxable gasoline sales is overstated, the selling prices used to compute his gasoline sales were excessive, and the actual gasoline sales are reflected in the P&L's. We disagree that petitioner sold only 2,351,000 gallons of the 2,440,553 gallons of gasoline that he acknowledges receiving from his vendor. We find petitioner's argument, that 89,533 gallons of gasoline remain unsold in reserve inventory, is illogical given that he has only three 12,000-gallon underground storage tanks. Also, petitioner has not provided any gasoline inventory information, so we decline to recommend any adjustments for inventories. Further, in petitioner's reconciliation schedules and bills of lading where he acknowledges receiving 2,440,533 gallons of gasoline from his vendor, we noted omissions of three shipments and a duplication which, when corrected, results in a difference of less than 800 gallons from the audited amount. Accordingly, we conclude that the 2,458,758 gallons of gasoline used in the computation of taxable gasoline sales is reasonably accurate.

Petitioner has not provided documentation of lower selling prices to establish more accurate gasoline sales amounts. On the contrary, copies of credit card receipts provided by petitioner after the appeals conference indicate the audited selling prices may be conservative. The Department's use of DOE published gasoline selling prices to establish petitioner's gasoline sales is an approved audit method. We note that the +6.22 percent price variance that the Department used to adjust the DOE

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[1] Petitioner did not provide his gasoline inventory information, so the Department presumed that petitioner's gasoline sales equaled his purchases in terms of gallons. To compute those gallons, the Department divided the $307,657 of prepaid sales tax that petitioner's vendor, Equilon, reported as having received from petitioner during the audit period by the per-gallon sales tax prepayment rates in effect at the time of those purchases and established 2,458,258 as the number of gallons of gasoline petitioner purchased. The Department computed quarterly statewide weighted average selling prices of gasoline using published prices from the United States Department of Energy (DOE) and estimated sales ratios of 80 percent for regular, 10 percent for mid-grade, and 10 percent for premium. It adjusted these selling prices by a price variance of +6.22 percent, and for sales tax reimbursement included. Petitioner's gasoline sales were ultimately calculated to be $6,466,206, then reduced by $21,168 to allow for documented exempt sales to the U.S. Government, resulting in audited taxable gasoline sales of $6,445,038.

published prices was based on actual observations. We conclude no adjustments to the gasoline selling prices are warranted.

The Department noted that petitioner's analysis of his sales tax liabilities, based on an assumption that the gasoline sales recorded on the P&L's include sales tax reimbursement, consistently result in a $3,000 to $4,000 quarterly tax understatement when compared with the tax reimbursement collections listed on those same P&L's. Also, the P&L's for each quarterly period generally describe the sales therein as "8:30AM [of the first day of the period] to 8:30AM [of the last day of the period]" meaning each P&L omits sales activity for 24 hours. Further, the 1,622,746 gallons of gasoline accounted for on the P&L's are 26,934 gallons less that the 1,649,689 gallons that Equilon reported delivering to petitioner. For all of these reasons, we do not agree that petitioner's P&L's accurately reflect petitioner's gasoline sales for 3Q05 through 2Q07, and conclude no adjustment is warranted.

Issue 2: Whether petitioner has established that relief from any portion of the interest is warranted. We conclude that he has not.

Petitioner contends that he relied on his former accountant to file accurate tax returns but that the audit deficiency resulted from the failures of the former accountant. The law provides for relief of interest only under narrow, specific circumstances. Petitioner does not contend that his failure to pay the tax was due to unreasonable error or delay by a Board employee, reliance upon written advice from the Board, or a natural disaster. Accordingly, we have no legal basis upon which to consider recommending relief of interest relief.

RESOLVED ISSUE

The Department imposed the negligence penalty because of the negative book markup and because it considered the differences in recorded and reported amounts to be significant. We concluded that the audit deficiency did not result from petitioner's negligence, and recommend deletion of the negligence penalty.

OTHER MATTERS

None.

Summary prepared by Pete Lee, Business Taxes Specialist II