

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:)
HARDIP SINGH SANDHU, dba 97 Mini Mart) Account Number SR KHM 100-632634
Petitioner) Case ID 533270
Weed, Siskiyou County

Type of Business: Convenience store

Audit period: 04/01/06 – 03/31/09

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$785,044		
Negligence penalty	\$ 8,268		
As determined and proposed to be redetermined		\$82,677.00	\$8,267.71
Less concurred		- 25,761.29	00.00
Balance, protested		<u>\$56,915.71</u>	<u>\$8,267.71</u>
Proposed tax redetermination		\$ 82,677.00	
Interest through 01/31/13		33,208.68	
Negligence penalty		<u>8,267.71</u>	
Total tax, interest, and penalty		\$124,153.39	
Payments		- 1,563.69	
Balance Due		<u>\$122,589.70</u>	
Monthly interest beginning 02/01/13		<u>\$ 405.57</u>	

A Notice of Appeals Conference was mailed to petitioner and his representative. Although the representative responded that he would appear, neither the representative nor petitioner attended the conference, which was held as scheduled. We thereafter sent a letter to petitioner and the representative offering the opportunity to provide any additional arguments and evidence in writing they wished us to consider. The representative provided some worksheets, which are addressed in the D&R.

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the unreported taxable sales. We find no adjustment is warranted.

1 Petitioner has operated a convenience store since September 2005, and he claimed more than
2 half of his reported sales as exempt sales of food products during the audit period. However, when the
3 Sales and Use Tax Department (Department) visited the store in June 2009, it noted that the shelf space
4 allotted to nontaxable merchandise represented only a small area of the store. Accordingly, the
5 Department concluded that further investigation was warranted. For audit, petitioner provided cash
6 register Z-tapes for eight months of the audit period and incomplete purchase invoices for the last five
7 quarters of the audit period. No other records were provided, and petitioner had not filed federal
8 income tax returns for 2006, 2007, or 2008 at the time of the audit.

9 To establish audited taxable sales, the Department listed the amounts shown on the available
10 cash register Z-tapes for the third quarter 2008 (3Q08) and 1Q09. The Department compared the
11 taxable sales it compiled of \$147,755 for 3Q08 and \$112,241 for 1Q09 to reported taxable sales for the
12 two quarters to compute an understatement of 158.91 percent in reported amounts, which it applied to
13 reported figures to establish an understatement of \$1,142,089. Petitioner contends that the amount of
14 understatement should be reduced to \$357,045, based on taxable sales compiled from cash register Z-
15 tapes for four additional quarters and the Department's examination of two quarters. Petitioner
16 compiled taxable sales of \$65,684 for 2Q06, \$52,755 for 1Q07, \$59,828 for 2Q07, and \$130,659 for
17 2Q08, which he compared to reported taxable sales for the same respective quarters of \$69,875,
18 \$60,000, \$80,000, and \$69,800, asserting that his reported taxable sales were overstated for 2Q06,
19 1Q07, and 2Q07, and were understated for 2Q08. As explanation, petitioner states that his reported
20 taxable sales were estimates, with both over-reporting and under-reporting errors.

21 Based on the nature of the available records, we find it was appropriate for the Department to
22 compute a percentage of understatement for two quarters and apply that percentage to the remainder of
23 the audit period. We note that there were dates during those two quarters for which Z-tapes were not
24 provided, and we therefore are not certain that the available Z-tapes were complete. Accordingly, we
25 find that the audit results appear reasonable, if not conservative. In contrast, the taxable sales compiled
26 by petitioner for three of the four were significantly less than the taxable sales compiled by the
27 Department for the two quarters it examined (\$65,684, \$52,755, and \$59,828 as compared to \$147,755
28 and \$112,241). However, petitioner has offered no explanation for the apparent dramatic increase in

1 sales from an average of less than \$60,000 per quarter for 2Q06, 1Q07, and 2Q07 to an average of over
2 \$130,000 for 2Q08, 3Q08, and 1Q09. In fact, petitioner's reported taxable sales actually declined after
3 2Q07, indicating a decrease, rather than an increase, in business. Moreover, petitioner acknowledges
4 that the Z-tapes used to compile taxable sales for the four quarters he reviewed are incomplete.
5 Accordingly, we find that the information petitioner provided for the four additional quarters is not
6 reliable and does not support any adjustment.

7 **Issue 2:** Whether petitioner was negligent. We find that he was.

8 The Department imposed a negligence penalty because petitioner did not provide adequate
9 records and the understatement was substantial. Petitioner disputes the penalty, but has not expressed
10 a specific basis for that disagreement.

11 Petitioner provided hardly any records, and he had not filed federal income tax returns for at
12 least three years. The substantial understatement of \$1,142,089 represents 159 percent of reported
13 taxable sales of \$718,701. Furthermore, petitioner has stated that reported amounts were estimates,
14 and those estimates, for the two quarters reviewed by the Department, represented significantly less
15 than half the amounts of taxable sales reflected on his own records (the cash register Z-tapes). We find
16 that the sorely limited records and the considerable amount of understatement, based solely on a
17 comparison of recorded and reported taxable sales, are clear evidence of negligence. Further, we find
18 that any businessperson, even one with limited experience, should have recognized that sales reported
19 to the Board should not be estimated and should have known that he is required to file federal income
20 tax returns. Thus, we find that the negligence penalty was properly applied, even though petitioner had
21 not been audited previously.

22 **OTHER MATTERS**

23 None.

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