

1 recorded taxable sales exceeded reported amounts by \$302,273 for the year 2005 and by \$633,643¹ for
2 the years 2006 and 2007. The Department issued Notices of Determination (determinations) for those
3 respective amounts to Shiraz and Mr. Naderpour.

4 Petitioners do not dispute the amounts of difference established by the Department. Instead,
5 they contend that the taxation of gasoline sales violates the Interstate Commerce Clause of the United
6 States Constitution. Petitioners base this argument on the fact that automobiles for which the gasoline
7 was sold may cross state lines. Petitioners have not cited any authority or provided any documentation
8 to support this position.

9 Sales tax is imposed on a seller's retail sales of tangible personal property in California. (Rev.
10 & Tax. Code § 6051.) All gross receipts from the sale of tangible personal property are presumed
11 subject to tax, unless the retailer proves otherwise. (Rev. & Tax. Code § 6091). Petitioners sold
12 gasoline, which is tangible personal property, and have offered no evidence that those sales were
13 exempt or excluded from sales tax. It is irrelevant that the purchaser may have driven vehicles out of
14 state after purchasing fuel from petitioners. Accordingly, we find that petitioners' sales of gasoline
15 were subject to sales tax.

16 With respect to petitioners' constitutional argument, under Article III, Section 3.5, of the
17 California Constitution, the Board may not declare a statute unenforceable, or refuse to enforce a
18 statute, on the basis that it is unconstitutional unless an appellate court has made a determination that
19 such statute is unconstitutional. No appellate court has found section 6051 invalid with respect to sales
20 of gasoline. Therefore, we have no authority to conclude that the application of sales tax to sales of
21 gasoline is unconstitutional. Further, we find no constitutional infirmity in applying California sales
22 tax to retail sales of gasoline inside this state.

23 **Issue 2:** Whether the determination issued to Shiraz was timely for the period January 1, 2005,
24 through June 30, 2005. We find that it was.

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26 ¹ Although the total amount of understatement of \$633,643 is identified in the audit as a difference between recorded and
27 reported taxable sales, petitioner did not provide records for the second and third quarters of 2007. For those two quarters,
28 audited sales of gasoline were computed using the number of gallons of fuel purchased and average selling prices, and then
average percentages were applied to audited gasoline sales to compute taxable sales in the mini-mart and repair shop. Due
to errors in those computations, the amount of unreported taxable measure is understated by \$8,969. The Department has
not asserted an increase for that amount under Revenue and Taxation Code section 6563.

1 The Department issued a determination to Shiraz on August 22, 2008, for the year 2005.
2 Shiraz contends that the determination was not timely for the period January 1, 2005, through June 30,
3 2005, because the Department forged Mr. Naderpour's signature on the waiver of the statute of
4 limitations the Department states it took pursuant to Revenue and Taxation Code section 6488. The
5 waiver is dated April 18, 2008, before the expiration of the three-year period (Rev. & Tax. Code, §
6 6487) with respect to the first quarter 2005, which extended the period for mailing the determination
7 for the period January 1, 2005, through June 30, 2005, until October 31, 2008. The determination was
8 issued before that date, on August 22, 2008. Accordingly, unless petitioner shows that the waiver of
9 the statute was not valid, it is clear that the determination was timely for the entire year 2005.

10 Petitioner has provided nothing beyond a bare allegation to prove the waiver was forged. We
11 have compared the signature on the waiver of the statute of limitations with Mr. Naderpour's signature
12 on several other documents and all of the signatures appear similar. It is not the Board's policy to
13 forge taxpayer's signatures on waivers, and we find no evidence that the Department did so here.
14 Thus, we find petitioner's allegation of forgery to be without merit. We therefore find that the waiver
15 of the statute of limitations is valid, and the determination issued to Shiraz was timely for the period
16 January 1, 2005, through June 30, 2005.

17 **OTHER DEVELOPMENTS**

18 None.

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