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:	
JARNAIL SINGH, dba Abby Arco	Account Number: SR KHO 100-456542 Case ID 469091
Petitioner	Fresno, Fresno County

Type of Business: Gasoline station with mini-mart

Audit period: 10/21/04 – 09/30/07

Item	Disputed Amount
Unreported taxable sales	$127,258
Disallowed claimed exempt sales of food	$ 65,791

Tax as determined:	$115,921.87
Adjustment - Appeals Division	- 5,985.87
Proposed redetermination,	$109,936.00
Less concurred	- 94,566.48
Balance, protested	$ 15,369.52
Proposed tax redetermination	$109,936.00
Interest through 4/30/11	51,724.14
Total tax and interest	$161,660.14
Monthly interest beginning 05/01/11	$ 641.29

This matter was scheduled for Board hearing on September 14, 2010, but was postponed because petitioner filed a settlement proposal.

UNRESOLVED ISSUES

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

Petitioner operated an ARCO gasoline station and mini-mart. In the mini-mart, petitioner sold beer, wine, cigarettes, soda, hot food, miscellaneous taxable merchandise, exempt food products, and lottery tickets. The Sales and Use Tax Department (Department) compared recorded and reported taxable sales and computed an understatement of $1,310,160. To verify the accuracy of recorded taxable sales of gasoline, the Department estimated petitioner's sales of gasoline, using the number of gallons purchased and the statewide average selling prices. Using that procedure, the Department computed gasoline sales of $8,910,832, which exceeded petitioner's recorded gasoline sales of $8,688,822. The Department also compared recorded selling prices and recorded costs to compute an average difference of 11 cents per gallon for the audit period. Since the Department concluded that a selling price exceeding cost by 11 cents per gallon was reasonable for this gas station, and since the recorded gasoline sales were similar to the amount it computed using gasoline purchases and statewide average selling prices, the Department concluded that recorded sales of gasoline were substantially accurate. Thus, for the purposes of this audit item, the Department simply compared recorded and reported taxable sales.

Petitioner contends that the audited sales of gasoline are excessive because his selling prices did not exceed costs by 11 cents per gallon. Petitioner asserts that he has to keep his selling price low because of his location, competition, and the brand of gas he sells. On that basis, petitioner argues that the maximum difference between his selling prices and costs is 6 cents per gallon. Using the number of gallons he purchased during the audit period and $2.70 (the statewide average selling price per gallon for the audit period of $2.75 less 5 cents), petitioner has computed taxable sales of gasoline of $9,493,056, which he asserts is evidence that the audited understatement of reported taxable sales should be reduced by $127,258.

Petitioner contends that he has accurately computed that his taxable sales of gasoline were $9,493,056, but this is a larger amount than the audited taxable sales of gasoline of $8,688,822. We note in this regard that the Department used recorded taxable sales to compute the understatement, and did not use projections or indirect audit methods. While petitioner asserts that the records the Department received from the office of his deceased bookkeeper's office may be incorrect, he has not documented, or even identified, any specific errors. Petitioner also argues that the audited amounts of sales must be excessive because, if they were accurate, it would not have been necessary for him to borrow funds to keep the business going. However, the Department has established a difference between recorded and reported taxable sales, and it has conducted audit testing to verify that the recorded gasoline sales (which represent the majority of the recorded taxable sales) are reasonable. Not only has petitioner offered no evidence to show that recorded taxable sales were overstated, he has also calculated taxable gasoline sales in excess of those calculated by the Department. We believe that the Department's calculations are more accurate, and recommend no adjustment.

Issue 2: Whether adjustments are warranted to the disallowed claimed exempt sales of food. We recommend no further adjustment.

In its preliminary review of claimed exempt sales of food, the Department computed that petitioner's book markup for taxable mini-mart merchandise was negative and the book markup for exempts sales of food was 200 percent or greater, which it regarded as unreasonably high for this business. Since it is not expected that a business will sell taxable goods at a loss (particularly on an ongoing basis) and while establishing an unreasonably high markup for exempt sales, the Department decided to establish exempt sales of food on a markup basis. The Department used petitioner's purchase invoices to segregate purchases of mini-mart merchandise for four months of the audit period. After the appeals conference, petitioner provided three additional invoices, which the Department incorporated into the purchase segregation. After the post-conference adjustment, the Department computed that 58.14 percent of petitioner's purchases represented taxable merchandise, and 41.86 percent represented exempt food products. The Department used audited purchases of food and a markup of 56.23 percent, computed in a shelf test, to establish audited exempt sales of food, and computed an overstatement in the claimed amount of exempt sales of food of $200,938.[1]

Petitioner contends that the percentage of taxable to total purchases should be reduced to 54 percent, with a corresponding increase in the percentage of exempt food products to total purchases to 46 percent. Using that percentage and the audited markup, petitioner has computed an overstatement of claimed exempt food sales of $135,147, and he disputes the remaining $65,791 ($200,938 - $135,147).

We note that petitioner provided three missing invoices after the appeals conference to support his contention that the audited percentages of taxable merchandise and exempt food products should be adjusted. However, in recomputing the percentage of taxable to total purchases, petitioner used only

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[1] We note that adjustments for self-consumption and pilferage would be to petitioner's detriment in this case because they would result in a reduction of the audited amount of exempt food sales.

one of those three invoices. In contrast, the Department included all three of the invoices in the purchase segregation test to compute its revised percentages. We find that the Department has used the most complete purchase information available to compute the audited percentages of taxable merchandise and exempt food products, and we therefore conclude no further adjustments are warranted.

OTHER DEVELOPMENTS

None.

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

MARKUP TABLE

Percentage of taxable to total purchases Percentage of exempt food products to total purchases	58.14% 41.86%
Mark-up percentage developed—exempt sales of food	56.23%
Self-consumption allowed in dollars	None*
Pilferage allowed in dollars	None*

* In this case, the Department applied an audited markup to compute the audited amount of exempt sales of food products. As a result, adjustments for self-consumption and pilferage would be to petitioner's detriment because they would decrease the audited amount of exempt sales.