

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:)
Z & R OIL CORPORATION) Account Number SR AS 100-496459¹
Petitioner) Case ID 532457
Los Angeles, Los Angeles County

Type of Business: Gas station with mini-mart
Audit period: 01/01/07 – 12/31/09

<u>Item</u>	<u>Disputed Amount</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$7,790,063		
Negligence penalty	\$ 36,573		
As determined		\$502,948.50	\$50,294.88
Post-D&R adjustment		<u>-137,223.39</u>	<u>-13,722.32</u>
Proposed redetermination		<u>\$365,725.11²</u>	<u>\$36,572.56³</u>
Proposed tax redetermination		\$365,725.11	
Interest through 02/28/14		127,518.30	
Negligence penalty		<u>36,572.56</u>	
Total tax, interest, and penalty		<u>\$529,815.97</u>	
Monthly interest beginning 03/01/14		<u>\$1,828.63</u>	

UNRESOLVED ISSUES

Issue 1: Whether additional adjustments are warranted to the amount of unreported taxable sales. We find no further adjustments are warranted.

Petitioner has operated a gasoline station with a mini-mart since 2004. Petitioner provided no books and records for audit. After the appeals conference, petitioner provided cash register tapes that the Sales and Use Tax Department (Department) used to establish petitioner’s gasoline selling prices

¹ Separate Board Hearing Summaries have been prepared for three related appeals: Three Four R, Inc., SR AS 100-729051, Case ID 532577; Rashid & Sons, Inc., SR AA 100-417411, Case ID 533211; and RD 786 Enterprises Inc., dba Century Gas, SR AS 100-502649, Case ID 533217.

² The proposed redetermined amount of tax is net of the unclaimed sales tax prepayments of \$310,587.

³ In the D&R, we calculated that the negligence penalty would be reduced to \$36,572.42. However, in the reaudit, the negligence penalty was only reduced to \$36,572.56 due to rounding.

1 for five separate days during the audit period. The Department compared these gasoline selling prices
2 to the statewide average gasoline selling prices posted on the Department of Energy's (DOE) website
3 to establish a price differential for gasoline. The Department found petitioner's gasoline selling prices
4 were lower than the DOE prices. Because the cash register tapes did not include any diesel fuel selling
5 prices and petitioner sold diesel fuel, the Department compared petitioner's posted diesel selling prices
6 it observed on nine separate days to the DOE diesel fuel selling prices to establish a price differential
7 for diesel. The Department found petitioner's diesel selling prices were higher than the DOE prices.
8 Given the lack of records, the Department reduced the DOE gasoline selling prices and increased the
9 DOE diesel fuel selling prices by the price differentials to establish audited gasoline and diesel fuel
10 selling prices for each quarterly period in the audit. The Department divided the prepaid sales tax
11 reported to the Board by petitioner's fuel suppliers by the applicable prepaid sales tax rates to establish
12 the total gallons of gasoline and diesel fuel purchased. The Department established the number of
13 gallons sold by reducing the total gallons of gasoline purchased by one percent to allow for theft.
14 Using ratios obtained from the DOE website, the Department segregated audited gallons of gasoline
15 sold by gasoline grade. For each quarterly period in the audit, the Department used the audited
16 gasoline and diesel fuel selling prices and the number of gallons sold to compute audited taxable sales
17 of gasoline and diesel fuel for the audit period. Since petitioner provided no documentation showing
18 its sales of mini-mart merchandise, the Department visited the business and found similar amounts of
19 taxable and nontaxable merchandise inside the mini-mart. Therefore, the Department determined that
20 petitioner's taxable sales of mini-mart merchandise equaled its claimed exempt food sales, which was
21 \$284,574 for the audit period. Overall, in the post-D&R reaudit, the Department established audited
22 taxable sales that exceeded reported taxable sales by \$7,790,063.

23 Petitioner contends audited purchases of gasoline and diesel fuel are overstated. Petitioner also
24 contends an allowance of 10 percent should be allowed for theft of gasoline and diesel fuel. Further,
25 petitioner asserts it is entitled to a credit for bad debts on taxable sales. Petitioner provided no
26 documentary evidence to support its contentions. Thus, we reject petitioner's contentions, and we
27 recommend no additional adjustments.

28 **Issue 2:** Whether petitioner was negligent. We conclude that it was.

