

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION PETITION FOR REHEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)5 HUNG VAN PHAM, dba)
6 Lee's Auto Repair & Gas)Account Number: SR BH 100-017565
Case ID 486918

7 Petitioner)

Redwood City, San Mateo County

8 Type of Business: Gasoline station

9 Audit period: 01/01/05 – 09/14/06

10 Item Disputed Amount11 Unreported sales of gasoline \$458,957
12 Negligence penalty \$ 5,066TaxPenalty

13 As determined:	\$50,661.33	\$5,066.16
14 Adjustment - Appeals Division	- 2,935.02	- 293.51
14 Proposed redetermination	\$47,726.31	\$4,772.65
15 Less concurred	- 9,862.31	0.00
15 Balance, protested	<u>\$37,864.00</u>	<u>\$4,772.65</u>
16 Proposed tax redetermination	\$47,726.31	
17 Interest through 03/31/12	25,366.86	
17 Negligence penalty	<u>4,772.65</u>	
18 Total tax, interest, and penalty	<u>\$77,865.82</u>	
19 Monthly interest beginning 04/01/12	<u>\$ 278.40</u>	

20 This appeal was presented to the Board for decision on the nonappearance calendar on
21 November 15, 2011, because petitioner's representative had waived his right to appear at the scheduled
22 hearing. The Board ordered the tax and penalty redetermined in accordance with the Appeals
23 Division's recommendation. Petitioner filed a timely petition for rehearing, which was scheduled for
24 decision on February 28, 2002, but the matter was removed from the consent calendar at the request of
25 Ms. Marcy Jo Mandel.

26 **UNRESOLVED ISSUE**27 **Issue:** Whether the petition for rehearing should be granted. We recommend that it be denied.

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Petitioner requests a rehearing on the basis that his representative's failure to attend the hearing was the result of a misunderstanding between petitioner and the representative.

This matter had originally been scheduled for hearing in July 2011, and petitioner's representative requested a postponement to allow time to prepare a brief. Then, in response to the notice for the November 15, 2011 hearing, the representative waived the hearing and provided a brief expressing petitioner's contentions. We find that petitioner, through his representative, made a conscious decision to present written material and to have the matter decided on the record. Petitioner has provided no new arguments or evidence, or even indicated that his presentation would be different from the brief presented to the Board. Accordingly, we recommend that the petition for rehearing be denied.

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