CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION FINAL ACTION SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of: SAFWAT TAWADROS SALIB & WAFAA SALIB , dba Indiana Liquor Deli Plus Petitioner	Account Number SR EH 97-740394 Case ID 534396 Riverside, Riverside County

Type of Business: Liquor store

Audit period: 01/01/06 – 03/31/09

Item	Disputed Amount
Unreported taxable sales	None

	Tax	Penalty
As determined	$168,991.27	$16,899.15
Pre-D&R adjustment	- 11,160.68	- 1,116.06
Post-D&R adjustment	- 51,365.60	- 5,136.57
Proposed redetermination	$106,464.99	$10,646.52
Less concurred	- 106,464.99	- 10,646.52
Balance, protested	$ 00.00	$ 00.00

Proposed tax redetermination	$106,464.99
Interest through 11/30/13	46,739.58
Negligence penalty	10,646.52
Total tax, interest, and penalty	$163,851.09
Payments	- 148.50
Balance Due	$163,702.59
Monthly interest beginning 12/01/13	$ 531.58

This matter was scheduled for Board hearing in October 2012, but was postponed at petitioner's request due to a scheduling conflict. It was rescheduled for hearing in February 2013 but petitioner did not respond to the Notice of Hearing, and the matter was scheduled for decision on the nonappearance calendar. The Sales and Use Tax Department (Department) then requested that the matter be deferred for further review.

RESOLVED ISSUES

Prior to the most recent review by the Department, the only disputed issue in this matter was whether adjustments were warranted to the unreported taxable sales. After the adjustment recently recommended by the Department, we find no further adjustment is warranted. Petitioner concurs with the remaining determined understatement.

Petitioner has operated a liquor store since September 2000. Although petitioner's records appeared reasonably complete and the book markup appeared adequate, the Department concluded that further investigation was necessary because it found discrepancies in the amounts of purchases recorded in the general ledger and income statements. Accordingly, the Department used information it received from vendors to compute understatements in recorded purchases. The Department then reduced audited purchases by 1 percent for shrinkage.

Using markups it computed in shelf tests, combined with shelf tests submitted by petitioner, the Department computed weighted average markups of 20.09 percent for 2006, 21.98 percent for 2007, and 22.63 percent for 2008. The Department used the audited cost of taxable merchandise sold and the audited markups for each year to compute audited taxable sales.

Petitioner protested the audited amounts of tobacco purchases of $476,581 for 2006, $439,181 for 2007, and $259,269 for 2008. At the appeals conference, the Department recommended a reduction of audited tobacco purchases for 2006 and 2007 to the amount established for 2008, $259,269. In addition, the Department recommended an adjustment for the cost of self-consumed taxable merchandise, estimated at $100 per month. However, while it made the adjustment to the cost of goods sold to account for the self-consumption, it did not include the $3,600 cost of taxable merchandise consumed in the measure of tax.[1]

Petitioner contended that the annual tobacco purchases should be reduced to $190,499, which is the amount the Department actually verified with two vendors for the year 2008 (while the $259,269 audited tobacco purchases for that year was computed by applying a recording error rate of

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[1] This decision was incorrect and not consistent with the Department's treatment of similarly situated taxpayers. Nevertheless, since we did not reject this adjustment previously, and since we do recognize the amount of the benefit conferred on petitioner is relatively small, we do not now recommend an adjustment.

3,350 percent to petitioner's recorded tobacco purchases of $7,740 for that year). Alternatively, petitioner contended that the audited markup for tobacco should be reduced from 16.27 percent, computed in the combined shelf tests, to 9.3 percent, computed in petitioner's shelf test.

When it was preparing this matter for Board hearing, the Department concluded that additional adjustments were warranted. After further review, the Department concluded that audited cigarette purchases should be reduced to $225,910 per year. We concur, and we make that recommendation. Petitioner concurs with the adjustment. Also, petitioner concurs with our recommendation to make no further adjustment to the audited markup for cigarettes.

In addition to the primary issue, petitioner stated at the appeals conference that it no longer protests the amount of unreported taxable cigarette rebates of $45,423 or the negligence penalty.

OTHER MATTERS

None.

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