

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:)
NASSIM FARJALLAH KHOURY,)
dba Khoury's Mobil Service)
Petitioner)

Account Number: SR EH 23-853416
Case ID 333834
Redlands, San Bernardino County

Type of Business: Service station

Audit Period: 1/1/02 – 12/31/04

<u>Items</u>	<u>Amounts in Dispute</u>	<u>Tax</u>	<u>Penalty</u>
Fraud penalty	\$13,027		
Amnesty double fraud penalty	\$462		
Amnesty interest penalty	\$71		
As determined		\$52,184.73	\$13,489.22
Concurred in		<u>52,184.73</u>	<u>0.00</u>
Protested		<u>\$ 0.00</u>	<u>\$13,489.22</u>
Proposed tax redetermination		\$52,184.73	
Interest through 7/31/06 (tax paid in full 7/21/06)		10,716.34	
Fraud penalty		13,027.02	
Amnesty double fraud penalty		462.20	
Amnesty interest penalty		<u>71.06</u>	
Total tax, interest, and penalties		\$76,461.35	
Payments		<u>-76,390.29</u>	
Balance due		<u>\$ 71.06</u>	

UNRESOLVED ISSUE

Issue: Whether the Sales and Use Tax Department (Department) has met its burden of establishing that petitioner's underreporting was due to fraud or intent to evade tax. We find that the Department has proven by clear and convincing evidence that there was fraud or an intent to evade tax, and therefore the fraud penalty is warranted.

Petitioner, a sole proprietor, operated Khoury's Mobil Service, a service station and mini mart, since July 11, 1990. This is petitioner's fourth audit. Upon audit, the Department found that petitioner

1 underreported his taxable sales by \$673,351, consisting of \$25,393 for unreported taxable cigarette
2 rebates, \$11,754 for additional sales based on a markup basis, and \$636,204 for differences established
3 between recorded and reported taxable sales. The Department asserted the fraud penalty because
4 petitioner: (1) collected sales tax reimbursement and did not remit the entire amount collected to the
5 Board; (2) instructed his prior accountant to reduce petitioner's reported sales tax liability; and (3) had
6 three prior audits, all with similar types of errors. When petitioner was informed that his business was
7 being audited, petitioner's reporting for the last quarter of the audit period (4Q04) improved
8 substantially.

9 The Board's records indicate that the sales and use tax returns through 4Q02 were prepared by
10 petitioner's accountant, Mr. Paul Duralia. Mr. Duralia passed away and his business was purchased by
11 Mr. David Streit, who prepared petitioner's returns for 1Q03 through 3Q03. Starting 4Q03, petitioner
12 prepared his own returns. The Department found significant differences between recorded and
13 reported taxable sales from 1Q03 through 3Q04. The records provided by Mr. Streit include
14 handwritten notations that petitioner instructed Mr. Streit to reduce the reported taxable sales.
15 Specifically, for the 1Q03 return, Mr. Streit's draft return shows total sales of \$760,877, but the actual
16 return filed reported total sales of \$664,095. Mr. Streit's notes include the notation, "Adjusted to
17 664095 per Nassim Khoury." For 2Q03, Mr. Streit's records contain a note which states, "Lowered
18 total amount due by \$8923.00 per Nassim Khoury. Lowered total fuel sales by 136,000 gallons." The
19 note is dated July 31, 2003, and is signed by petitioner. The tax due on the return for 2Q03 signed and
20 filed by petitioner is \$8,632, \$8,941 less than the amount shown on the worksheet prepared by
21 Mr. Streit. For 3Q03, Mr. Streit's worksheet shows total sales of \$765,634 and total tax due of
22 \$12,514. However, the return signed and filed by petitioner shows total sales of \$665,634 and total tax
23 due of \$5,663 – \$100,000 and \$6,851 less than the original worksheet, respectively.

24 Petitioner contends that the differences between recorded and reported taxable sales resulted
25 from his failure to include the 18-cent per gallon federal excise tax on fuel sales in his taxable sales.
26 Petitioner argues that he prepared his returns based on instructions he received from Mr. Duralia, and
27 that petitioner believed he was correctly reporting his tax liability. Petitioner asserts that he had family
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1 no one informed him of the amnesty program, he moved between April 2005 and August 2005 and did
2 not receive all his mail, and both he and his mother had serious health problems.

3 The Department sent petitioner an “amnesty letter” on February 1, 2005, prior to petitioner’s
4 move, which explained petitioner’s obligations under the amnesty program, and the auditor discussed
5 the amnesty program with petitioner on February 18, 2005. Finally, petitioner actually filed a timely
6 amnesty application, which conclusively shows that he was aware of the amnesty program and its
7 requirements prior to May 31, 2005. Petitioner has provided no evidence of health problems, or any
8 explanation of how his health or his mother’s health prevented him from filing amnesty returns, paying
9 the tax and interest due, or entering into an installment payment plan by May 31, 2005. Accordingly,
10 we conclude that there is no basis for relief of the amnesty penalties.

11 **OTHER DEVELOPMENTS**

12 None.

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16 Summary prepared by John K. Chan, Business Taxes Specialist I
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EVIDENCE OF FRAUD RELIED ON BY DEPARTMENT

1.	Substantial deficiency, which cannot be explained as due to negligence or honest mistake.	Yes
2.	More than one set of records.	No
3.	Falsified records.	No
4.	Substantial discrepancies between recorded and reported amounts for which there is no valid explanation.	Yes
5.	Seller's permit held by petitioner for prior period indicating that petitioner was knowledgeable about the requirements of law.	Yes
6.	Tax properly charged to customers, evidencing a knowledge of the requirements of the law, but not reported.	Yes
7.	Transfers of amounts of unpaid tax from the tax accrual account to another income account.	N/A
8.	Consistent substantial underreporting.	Yes