

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petitions for Redetermination )  
 4 Under the Sales and Use Tax Law of: )  
 5 RANDEEP SINGH DHILLON, dba ) Account Number: SR DFB 100-004915  
 ARCO AM PM #81799 ) Case ID 485664  
 6 BEALE MONTEREY ENTERPRISES, INC. ) Account Number: SR DFB 100-676725  
 ) Case ID 485668  
 7 SAM SAMBEE ENTERPRISES, INC. ) Account Number: SR DFB 100-751157  
 ) Case ID 485729  
 8 Petitioners ) Bakersfield, Kern County  
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10 Type of Business: ARCO gas stations and mini-marts

11 Audit periods: 04/01/02 – 06/30/07 (485664)  
 12 01/07/06 – 06/30/07 (485668)  
 06/01/06 – 06/30/07 (485729)

13 <u>Item</u>	<u>Disputed Amount</u>
14 Fraud penalty	\$107,715 (485664)
	\$ 35,855 (485668)
	\$ 48,181 (485729)
16 Amnesty double fraud penalty	\$ 711 (485664)
Amnesty interest penalty	\$ 274 (485664)

	<u>485664</u>		<u>485668</u>		<u>485729</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
19 As determined	\$430,860.17	\$108,425.75	\$143,418.91	\$35,854.74	\$192,723.29	\$48,180.83
Less concurred	-430,860.17	00.00	-143,418.91	00.00	-192,723.29	00.00
20 Balance, protested	<u>\$ 00.00</u>	<u>\$108,425.75</u>	<u>\$ 00.00</u>	<u>\$35,854.74</u>	<u>\$ 00.00</u>	<u>\$48,180.83</u>
21 Proposed tax redetermination	\$430,860.17		\$143,418.91		\$192,723.29	
Interest through 10/31/13		211,371.74		70,460.02		93,579.36
22 Fraud penalty		107,715.06		<u>35,854.74</u>		<u>48,180.83</u>
23 Amnesty double fraud penalty		710.69				
Amnesty interest penalty		<u>273.59</u>				
24 Total tax, interest, and penalty	\$750,931.25		\$249,733.67		\$334,483.48	
Payments	- 187,493.00		- 25,715.20		- 26,571.77	
25 Balance Due	<u>\$563,438.25</u>		<u>\$224,018.47</u>		<u>\$307,911.71</u>	
26 Monthly interest beginning 11/1/13	<u>\$1,216.84</u>		<u>\$588.52</u>		<u>\$830.76</u>	

27 This matter was scheduled for Board hearing in June 2011, but was postponed at petitioners'  
 28 request because their representative had a scheduling conflict. It was rescheduled for October 27,

1 2011, but was postponed because the afternoon session of that meeting was cancelled. It was  
2 rescheduled for January 31, 2012, and again for July 25, 2012, but was postponed each time at  
3 petitioners' request, first because Mr. Dhillon was scheduled to be out of the country on that date, and  
4 then due to health reasons. The matter was rescheduled for hearing on October 23, 2012, but was  
5 postponed for settlement consideration.

### 6 UNRESOLVED ISSUES

7 **Issue 1:** Whether the understatements were the result of fraud or intent to evade the tax.<sup>1</sup> We  
8 conclude that they were.

9 Petitioners operated ARCO AM/PM gas stations with mini-marts. Mr. Dhillon, who owned  
10 one of the businesses as a sole proprietor and was the president and majority owner of the two  
11 corporations, has been involved in the operation of ARCO gas stations for over 25 years, and he holds  
12 a doctorate's degree in Economics. For all the locations at issue, ARCO had a point of sale computer  
13 system in place that recorded all daily sales and transmitted that information electronically to ARCO.  
14 ARCO then prepared summary reports, called Royalty Reports or Royalty Sheets, and sent copies to  
15 each business. ARCO also provided each business with reports of its gasoline purchases, by location.

16 When the Sales and Use Tax Department (Department) requested copies of the Royalty  
17 Reports, Mr. Dhillon initially stated they were unavailable. However, a year later, when the  
18 Department indicated it would subpoena the records directly from ARCO, Mr. Dhillon produced  
19 copies of the Royalty Reports. With only a few exceptions, the Department used information from the  
20 available Royalty Reports to establish audited taxable sales, and it computed understatements of  
21 \$11,375,163 (case ID 485664), \$3,721,047 (case ID 485668), and \$5,336,666 (case ID 485729). The  
22 Department also noted petitioners were claiming only one-third of the amount of prepaid sales tax paid  
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26 <sup>1</sup> Without regard to whether the finding of fraud is upheld, the determinations issued to Beale Monterey Enterprises, Inc.  
27 and Sam Sambee Enterprises, Inc. were timely issued for the entire periods under the three-year statute of limitations. The  
28 determination issued to Randeep Singh Dhillon was timely issued for the period April 1, 2004, through June 30, 2007,  
because petitioner signed a series of waivers of the three-year statute of limitations, and was timely issued for the period  
April 1, 2002, through December 31, 2002, under the amnesty program's ten-year statute of limitations. The determination  
issued to Randeep Singh Dhillon is not timely for the period January 1, 2003, through March 31, 2004, unless the finding of  
fraud is upheld.

1 to ARCO, and that the claimed amounts of prepaid sales tax were consistent with the reported amounts  
2 of gasoline sales.

3           Petitioners concede the audited understatements, but dispute the finding of fraud. Petitioners  
4 assert that the understatements were unintentional and that they first learned of the mistakes during the  
5 audits. Mr. Dhillon stated that, during the audit periods, he and his wife were not directly involved  
6 with the day-to-day operations, and that they relied on employees to operate the businesses and to  
7 properly report taxable sales. Mr. Dhillon has made various, sometimes inconsistent, comments  
8 regarding his operation of the businesses. Also, despite asserting that the reporting of tax was the  
9 responsibility of managers, Mr. Dhillon has conceded that his wife prepared the returns, each of which  
10 was signed by Mr. Dhillon or his wife. (Even if the managers had been responsible for fraudulent  
11 reporting as petitioners seem to assert, such actions would have been within the scope of the managers'  
12 employment and imputed to the businesses, absent a showing of theft or embezzlement by the  
13 employees.)

14           The Department must establish fraud by clear and convincing evidence. (Cal. Code Regs., tit.  
15 18, § 1703, subd. (c)(3)(C).) Here, petitioners had actual knowledge of their taxable sales, as recorded  
16 on the Royalty Sheets, and their contentions to the contrary are inconsistent and unconvincing.  
17 Despite such knowledge, petitioners failed to report a combined \$767,002 in taxes (after deducting the  
18 prepaid sales tax credit), which represents an exceptionally high error rate of 334 percent when  
19 compared with reported taxes of \$229,765 for the three businesses. Understatements of this magnitude  
20 are strong evidence of fraud, particularly since the correct amounts of sales were readily available to  
21 petitioners from the Royalty Reports. Moreover, petitioners carefully coordinated a consistent  
22 reduction of the claimed prepaid sales tax credit with a corresponding reduction in reported gasoline  
23 sales throughout every quarter of the audit periods, effectively concealing the underreported gasoline  
24 sales from someone reviewing only the reported figures. This is convincing evidence of petitioners'  
25 intent to evade tax. We find that petitioners' fraud has been established by clear and convincing  
26 evidence, and that the penalties are properly imposed.

27           **Issue 2:** Whether relief of the amnesty penalties is warranted. We find no basis for relief.  
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Since Mr. Dhillon did not participate in the amnesty program, an amnesty double fraud penalty of \$710.69 was added to the determination issued to the sole proprietorship. Also, an amnesty interest penalty of \$273.59 will be added when the liability becomes final.

Petitioner has filed a request for relief of the amnesty penalties on the basis that he did not understand the amnesty program. We find that the Department notified petitioner of the amnesty program, and we reject his assertion that he did not understand the program. Rather, we find that petitioner's failure to participate in the amnesty program was not the result of reasonable cause, and that relief of the amnesty penalties is not warranted.

**OTHER MATTERS**

None.

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