

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

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3 In the Matter of the Petitions for Redetermination,)
4 Administrative Protests, and Claims for Refund)
5 Under the Sales and Use Tax Law of:)
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19)
20 Petitioner/Taxpayer/Claimant ("Petitioner")) Los Angeles County

21 Type of Business: Gasoline stations with mini-marts
22 Audit periods: Various between 1/1/05 – 12/31/07
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Cyril Mobil
SR AA 97-486418
Case ID's 445466, 473541

Mary's Mobil
SR AP 97-022341
Case ID 473538

<u>Item</u>	<u>Disputed Amounts</u>				<u>Disputed Amounts</u>	
Understated gasoline sales	\$1,532,223				\$1,875,737	
Understated taxable mini-mart sales	\$ 69,310				\$ 30,465	
Understated taxable repair shop sales	\$ 142,508					
	<u>Case ID 445466</u>		<u>Case ID 473541</u>		<u>Case ID 473538</u>	
	<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>4/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$20,633.44	\$2,063.34	\$119,353.49	\$11,935.36	\$157,261.74	\$15,726.19
Pre-D&R adjustment	+3,896.54	+389.65	0.00	0.00	0.00	0.00
Post-D&R adjustment	<u>0.00</u>	<u>-2,452.99</u>	<u>0.00</u>	<u>-11,935.36</u>	<u>0.00</u>	<u>-15,726.19</u>
Proposed redetermination, protested	<u>\$24,529.98</u>	<u>\$ 0.00</u>	<u>\$119,353.49</u>	<u>\$ 0.00</u>	<u>\$157,261.74</u>	<u>\$ 0.00</u>
Proposed tax redetermination	\$24,529.98		\$119,353.49		\$157,261.74	
Interest through 10/31/12	<u>14,280.30</u>		<u>63,986.90</u>		<u>84,239.25</u>	
Total tax and interest	\$38,810.28		\$183,340.39		\$241,500.99	
Payments	<u>3,077.00</u>		<u>0.00</u>		<u>3,511.00</u>	
Balance Due	<u>\$35,733.28</u>		<u>\$183,340.39</u>		<u>\$237,989.99</u>	
Monthly interest beginning 11/1/12	<u>\$107.26</u>		<u>\$596.77</u>		<u>\$768.75</u>	

Grace Mobil
SR AA 100-000423
Case ID's 445467, 473537

Joy Mobil
SR AS 100-637373
Case ID 473539

<u>Item</u>	<u>Disputed Amount</u>				<u>Disputed Amount</u>	
Understated gasoline sales	\$1,153,619				\$916,654	
Understated taxable mini-mart sales					\$ 18,879	
	<u>Case ID 445467</u>		<u>Case ID 473537</u>		<u>Case ID 473539</u>	
	<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>10/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$18,811.17	\$1,881.12	\$72,362.90	\$7,236.30	\$77,181.53	\$7,718.16
Pre-D&R adjustment	+970.55	+97.06	0.00	0.00	0.00	0.00
Post-D&R adjustment	<u>0.00</u>	<u>-1,978.18</u>	<u>0.00</u>	<u>-7,236.30</u>	<u>0.00</u>	<u>-7,718.16</u>
Proposed redetermination, protested	<u>\$19,781.72</u>	<u>\$ 0.00</u>	<u>\$72,362.90</u>	<u>\$ 0.00</u>	<u>\$77,181.53</u>	<u>\$ 0.00</u>
Proposed tax redetermination	\$19,781.72		\$72,362.90		\$ 77,181.53	
Interest through 10/31/12	<u>11,265.10</u>		<u>38,822.81</u>		<u>40,026.46</u>	
Total tax and interest	\$31,046.82		\$111,185.71		\$117,207.99	
Payments	<u>3,423.00</u>		<u>0.00</u>		<u>4,088.54</u>	
Balance Due	<u>\$27,623.82</u>		<u>\$111,185.71</u>		<u>\$113,119.45</u>	
Monthly interest beginning 11/1/12	<u>\$81.79</u>		<u>\$361.81</u>		<u>\$365.46</u>	

Blessing Mart & Service
SR AA 100-348068
Case ID's 445468, 473540

Faith Mobil
SR AP 100-145396
Case ID 475481

<u>Item</u>	<u>Disputed Amount</u>				<u>Disputed Amount</u>	
Understated gasoline sales	\$1,067,648				\$1,615,135	
	<u>Case ID 445468</u>		<u>Case ID 473540</u>		<u>Case ID 475481</u>	
	<u>1/1/05 – 6/30/05</u>		<u>7/1/05 – 12/31/07</u>		<u>4/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$16,732.91	\$1,673.29	\$66,471.88	\$6,647.21	\$133,248.68	\$13,324.90
Pre-D&R adjustment	+2,030.22	+203.03	0.00	0.00	0.00	0.00
Post-D&R adjustment	<u>0.00</u>	<u>-1,876.32</u>	<u>0.00</u>	<u>-6,647.21</u>	<u>0.00</u>	<u>-13,324.90</u>
Proposed redetermination, protested	<u>\$18,763.13</u>	<u>\$ 0.00</u>	<u>\$66,471.88</u>	<u>\$ 0.00</u>	<u>\$133,248.68</u>	<u>\$ 0.00</u>
Proposed tax redetermination	\$18,763.13		\$66,471.88		\$133,248.68	
Interest through 10/31/12	<u>11,526.93</u>		<u>36,080.63</u>		<u>71,979.47</u>	
Total tax and interest	<u>\$30,290.06</u>		<u>\$102,552.51</u>		<u>\$205,228.15</u>	
Monthly interest beginning 11/1/12	<u>\$93.82</u>		<u>\$332.36</u>		<u>\$666.24</u>	

MK Chevron
SR AS 18-723259
Case ID 475476

MKL Chevron Service
SR AS 18-749904
Case ID 475478

<u>Item</u>	<u>Disputed Amounts</u>		<u>Disputed Amounts</u>	
Understated gasoline sales	\$1,159,034		\$1,045,873	
	<u>Case ID 475476</u>		<u>Case ID 475478</u>	
	<u>1/1/05 – 12/31/07</u>		<u>1/1/05 – 12/31/07</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
As determined	\$95,620.36	\$9,562.06	\$92,266.88	\$9,226.70
Add finality penalty	0.00	+9,562.04	0.00	+9,226.69
Post-D&R adjustment	<u>0.00</u>	<u>-9,562.06</u>	<u>- 5,982.34</u>	<u>-9,824.94</u>
Proposed adjusted determination, protested	<u>\$95,620.36</u>	<u>\$9,962.04</u>	<u>\$86,284.54</u>	<u>\$8,628.45</u>
Proposed adjusted tax determination	\$95,620.36		\$86,284.54	
Interest through 1/31/09	27,151.97		23,981.43	
Finality penalty	<u>9,562.04</u>		<u>8,628.45</u>	
Total tax, interest, and penalty	\$132,334.37		\$118,894.42	
Payments	<u>132,334.37</u>		<u>102,293.63</u>	
Balance Due	<u>\$ 0.00</u>		<u>\$ 16,600.79</u>	

UNRESOLVED ISSUES

Issue 1: Whether further adjustments are warranted to the measure of understated gasoline sales. We conclude that no further adjustments are warranted.

Petitioner owns eight gasoline stations with mini-marts. The Sales and Use Tax Department (Department) audited and issued notices of determination for each location. It compared petitioner's recorded gasoline purchases with reported gasoline sales, computed negative book markups of -0.0071 to -0.0807 which means recorded gasoline purchases were greater than reported gasoline sales, and

1 concluded that petitioner's reported gasoline sales were understated. It decided to establish petitioner's
2 gasoline sales using selling prices obtained from the U. S. Department of Energy (DOE). For each
3 location, the Department compiled the amount of sales tax reimbursement that petitioner prepaid to his
4 gasoline vendors on a quarterly basis and divided those amounts by the applicable tax rate to compute
5 the gallons of gasoline purchased. It weighted the DOE average selling prices for regular, mid-grade,
6 and premium grades of gasoline sold in the Los Angeles area by the December 2007 gasoline purchase
7 ratios for each location to compute a single weighted average selling price per quarter per location. It
8 adjusted those prices by the observed variances between the DOE price and petitioner's recorded
9 selling prices, which ranged from 17 cents less to 8 cents more per gallon than the DOE prices, and
10 removed the sales tax reimbursement included to compute audited average gasoline selling prices. It
11 applied the audited selling prices to the audited gallons of gasoline purchased to compute audited
12 gasoline sales, compared the audited gasoline sales to recorded/reported gasoline sales, and established
13 understatements of gasoline sales for each location.

14 Petitioner contended that the average gasoline selling prices and gallons of gasoline purchased
15 should be computed on a basis more frequent than quarterly, the purchase ratios of gasoline by grade
16 should be established throughout the audit period rather than using the ratio only from December 2007,
17 and the gallons of gasoline purchased should be computed directly from purchase invoices rather than
18 by dividing the sales tax prepayments to vendors by the sales tax prepayment rates. We recommended
19 that the Department prepare reaudits if petitioner provides the relevant calculations and documentation.

20 Subsequently, petitioner provided analyses, calculations, and documentation only related to
21 MKL Chevron Service, in which he compiled gasoline purchases, analyzed the DOE selling prices,
22 and computed gasoline sales on a weekly basis. The Department generally accepted petitioner's
23 analysis, but did not allow for an estimated 8 percent adjustment for "location" or "neighborhood." In
24 sum, the Department reduced MKL Chevron Service's understated gasoline sales by \$72,513, from
25 \$1,118,386 to \$1,045,873. The Department declined to reduce the audited gasoline sales of
26 petitioner's seven other stations due to the lack of documentation.

27 In a letter dated May 10, 2012, petitioner indicated that he "agreed to compile [DOE pricing]
28 information for three stations under reaudit and apply the methodology to the balance of the locations."

1 However, there is no evidence that petitioner compiled his agreed-to information for two other stations.
2 More importantly, petitioner's action does not follow our recommendation, i.e. that petitioner provide
3 selling price analyses, purchase ratio calculations, and actual gasoline purchase invoices *for each*
4 *station* to compute gasoline sales on a basis more frequent than quarterly. Nor has he supported his
5 8 percent adjustment of audited gasoline sales for "location" or "neighborhood" in his calculations for
6 the MKL Chevron Service reaudit. We find that no further adjustments are warranted.

7 **Issue 2:** Whether further adjustments are warranted to the measure of understated taxable mini-
8 mart sales. We conclude that no further adjustments are warranted.

9 The Department tested the mini-mart merchandise purchases for the fourth quarter 2007 at all
10 of the stations, found that at five of the stations the recorded taxable mini-mart book markups of 40 to
11 42 percent were adequate, and accepted the reported taxable mini-mart sales for those locations. With
12 respect to the other three stations, Cyril Mobil, Mary's Mobil, and Joy Mobil, the Department found
13 that the recorded mini-mart purchases were understated by 16, 21, and 19 percent, respectively; that
14 the taxable purchase ratios were 73, 72, and 53 percent, respectively; that the audited taxable mini-mart
15 purchases exceeded the reported taxable mini-mart sales at Cyril Mobil and Mary's Mobil; and that the
16 13.6 percent taxable mini-mart book markup at Joy Mobil was lower than expected for this type of
17 business. The Department concluded that the reported taxable mini-mart sales at these three locations
18 were understated, and decided to establish the taxable mini-mart sales by markup. It compiled
19 recorded mini-mart purchases, applied the applicable taxable purchases ratio to compute taxable
20 purchases, and applied the audited understatement error rate to the taxable purchases to compute
21 audited taxable mini-mart purchases. It reduced the taxable mini-mart purchases by one percent for
22 pilferage but none for self consumption (because petitioner indicated there was none) to compute
23 taxable purchases subject to markup, applied an estimated 33.33 percent markup to the adjusted
24 taxable purchases to compute taxable mini-mart sales, and reduced the taxable mini-mart sales for
25 exempt sales of taxable merchandise paid for with food stamps to compute adjusted taxable mini-mart
26 sales. It compared the adjusted taxable mini-mart sales with reported taxable mini-mart sales and
27 established understatements of taxable mini-mart sales for each of the three locations.

28 Petitioner contends that his recorded taxable mini-mart sales include sales tax reimbursement.

1 We note that if petitioner's contention were correct, the measure of tax for unreported taxable
2 mini-mart sales would increase for these three locations, but petitioner would benefit in the audits of
3 the five other locations. Petitioner was noncommittal when asked if he agreed with the 33.33 percent
4 estimated markup used to compute taxable mini-mart sales. We find that the 33.33 percent estimated
5 markup is reasonable because it is within the 25 to 40 percent range of markups expected for this type
6 of business. However, we recommended that during the reaudits petitioner provide documentation to
7 show that his recorded mini-mart sales include tax reimbursement, and to support a lower markup.

8 Petitioner has not provided documentation to show that his recorded mini-mart sales include
9 tax reimbursement, or to support a lower markup. Thus, we find that no adjustments are warranted.

10 **Issue 3:** Whether further adjustments are warranted to the measure of understated taxable
11 repair shop sales. We conclude that no further adjustments are warranted.

12 Petitioner operates a repair shop at Cyril Mobil. The Department noted that petitioner's
13 reported taxable repair shop sales was much less than his recorded repair shop purchases for the fourth
14 quarter 2007. It concluded that the reported taxable repair shop sales were understated, and decided to
15 establish the taxable repair shop sales by markup. The Department compiled recorded repair shop
16 purchases, reduced those purchases by one percent for pilferage but none for self consumption
17 (because petitioner indicated there was none) to compute repair shop purchases subject to markup, and
18 applied an estimated 50 percent markup to the adjusted repair shop purchases to compute audited
19 repair shop sales. It compared the audited repair shop sales with reported taxable repair shop sales and
20 established understatements of taxable repair shop sales for Cyril Mobil.

21 Petitioner contended that his recorded repair shop sales include sales tax reimbursement, and
22 that the recorded repair shop purchases are overstated. Petitioner was noncommittal when asked if he
23 agreed with the 50 percent estimated markup used to compute taxable repair shop sales. We
24 recommended that during the reaudit petitioner provide documentation to show that his recorded repair
25 shop sales include tax reimbursement, and to support a lower markup. We rejected petitioner's
26 proposal that he provide copies of purchase invoices of repair shop merchandise to determine a lower
27 amount of such purchases. Instead, we requested petitioner to analyze the recorded repair shop
28 purchases and identify any entries that represent purchases other than repair shop merchandise.

1 Petitioner has not provided documentation to show that his recorded repair shop sales include
2 tax reimbursement, or to support a lower markup. Nor has he identified any recorded repair shop
3 purchases that represent purchases other than repair shop merchandise. Therefore, we find that no
4 adjustments are warranted.

5 **Issue 4:** Whether petitioner should be relieved of the finality penalties. We conclude that relief
6 is not warranted.

7 The notices of determination for MK Chevron and MKL Chevron Service were both issued on
8 November 13, 2008, and when no payments were received or petitions filed by December 13, 2008,
9 became final with finality penalties accruing on that date. Subsequently, petitioner filed late petitions
10 for redetermination (accepted as administrative protests) on December 17, 2008, and paid the tax
11 portion of the determinations in full in January 2009. After the appeals conference, petitioner filed
12 requests for relief of the finality penalties, asserting that his outside accountant was negligent during
13 the audit and his belief that the audit liabilities will be greatly reduced in the post-conference reaudits.

14 We note that petitioner has filed timely petitions for six of the eight audits at issue, indicating
15 that he knew how to file timely petitions. While the taxes for these two audits have been paid,
16 petitioner has not provided any explanation for his failure to pay the determined taxes timely. We
17 conclude that petitioner's failure to file timely petitions and timely pay the tax portion of these
18 determinations were not due to circumstances beyond petitioner's control, and therefore find that relief
19 of the finality penalties is not warranted.

20 **Issue 5:** Whether the claims for refund should be granted in whole or in part. We conclude that
21 the claims for refund should be denied.

22 After the appeals conference, on February 3, 2010, petitioner filed claims for refund of
23 \$140,462.12 paid in January and March 2009 for MK Chevron (Case ID 524559), and \$92,266.88 paid
24 in January 2009 for MKL Chevron Service (Case ID 524544).¹ Since these claims were filed more
25 than six months after the payments and more than six months after the determinations became final,
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27 ¹ Payments towards the MK Chevron liability totaled about \$8,128 more than due on that account, so the difference was
28 transferred to the MKL Chevron account.

1 they are timely only to the extent that they were filed within three years from the last day of the month
2 following the close of the applicable quarterly period. (Rev. & Tax. Code, § 6902.) Thus, the claims
3 are timely for payments made for the period January 1, 2007, through December 31, 2007, but not for
4 payments made for earlier periods. Since we find that there has been no overpayment on either
5 account for 2007 (or, indeed, for the entire audit period of each account), we recommend that both
6 claims be denied..

7 **RESOLVED ISSUE**

8 The Department imposed a negligence penalty in each determination, but we concluded that
9 petitioner was not negligent. Thus, all negligence penalties have been deleted.

10 **OTHER MATTERS**

11 None.

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13 Summary prepared by Pete Lee, Business Taxes Specialist II
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