CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of:	
RD 786 ENTERPRISES, INC., dba Century Gas	Account Number SR AS 100-502649[1] Case ID 533217
Petitioner	Los Angeles, Los Angeles County

Type of Business: Gas station with mini-mart

Audit period: 01/01/07 – 12/31/09

Item	Disputed Amount
Unreported taxable sales	$1,281,491[2]
Negligence penalty	$ 11,513

	Tax	Penalty
As determined	$146,132.20	$14,613.22
Post-D&R adjustment	-31,004.65	-3,100.47
Proposed redetermination	$115,127.55	$11,512.75

Proposed tax redetermination	$115,127.55
Interest through 02/28/14	38,697.25
Negligence penalty	11,512.75
Total tax, interest, and penalty	$165,337.55
Monthly interest beginning 03/01/14	$ 575.64

UNRESOLVED ISSUES

Issue 1: Whether additional adjustments are warranted to the amount of unreported taxable sales. We find no further adjustments are warranted.

Petitioner has operated a gasoline station with a mini-mart since 2004. Petitioner provided no books and records for audit. After the appeals conference, petitioner provided cash register tapes that the Sales and Use Tax Department (Department) used to establish petitioner's gasoline selling prices

[1] Separate Board Hearing Summaries have been prepared for three related appeals: Three Four R, Inc., SR AS 100-729051, Case ID 532577; Rashid & Sons, Inc., SR AA 100-417411, Case ID 533211; and Z & R Oil Corporation, SR AS 100-496459, Case ID 532457.

[2] In the D&R, we recommended the measure of unreported taxable sales be reduced to $1,282,023. In the reaudit, this measure was reduced slightly to $1,281,491 due to rounding, with a corresponding reduction in the negligence penalty, from $11,517.50, referenced in the D&R, to $11,512.75.

for five separate days during the audit period. The Department compared these gasoline selling prices to the statewide average gasoline selling prices posted on the Department of Energy's (DOE) website to establish a price differential for gasoline. The Department found petitioner's gasoline selling prices were lower than the DOE prices. Given the lack of records, the Department reduced the DOE gasoline selling prices by the price differential to establish audited gasoline selling prices for each quarterly period in the audit. The Department divided the prepaid sales tax reported to the Board by petitioner by the applicable prepaid sales tax rates to establish the total gallons of gasoline purchased. The Department established the number of gallons sold by reducing the total gallons of gasoline purchased by one percent to allow for theft. Using ratios obtained from the DOE website, the Department segregated audited gallons of gasoline sold by gasoline grade. For each quarterly period in the audit, the Department used the audited gasoline selling prices and the number of gallons sold to compute audited taxable sales of gasoline for the audit period. Since petitioner provided no documentation showing its sales of mini-mart merchandise, the Department visited the business and found similar amounts of taxable and nontaxable merchandise inside the mini-mart. Therefore, the Department determined that petitioner's taxable sales of mini-mart merchandise equaled its claimed exempt food sales, which was $113,267 for the audit period. Overall, in the post-D&R reaudit, the Department established audited taxable sales that exceeded reported taxable sales by $1,281,491.

Petitioner contends audited purchases of gasoline are overstated. Petitioner also contends an allowance of 10 percent should be allowed for theft of gasoline. Further, petitioner asserts it is entitled to a credit for bad debts on taxable sales. Petitioner provided no documentary evidence to support its contentions. Thus, we reject petitioner's contentions, and we recommend no additional adjustments.

Issue 2: Whether petitioner was negligent. We conclude that it was.

The Department imposed the negligence penalty because petitioner provided no books and records (except for the cash register tapes provided after the appeals conference) and because the understatement was large. Petitioner contends it cooperated fully with the Department during the audit, and thus was not negligent. Petitioner provided no specific reasons for its failure to provide books and records. We find that petitioner's failure to provide any accounting records whatsoever is evidence of negligence and that the penalty was properly applied, even though petitioner had not been audited previously.

OTHER MATTERS

None.

Summary prepared by Ted Matthies, Business Taxes Specialist III