

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION BOARD HEARING SUMMARY

3 In the Matter of the Petition for Redetermination)
4 Under the Sales and Use Tax Law of:)

5 ASMAA I. SHALABY, dba Xtra Fuel)

6 Petitioner)

Account Number: SR AS 100-428631

Case ID 489020

Los Angeles, Los Angeles County

7
8 Type of Business: Gasoline Station

9 Audit period: 01/01/05 - 12/31/07

10 Item Disputed Amount

11 Negligence penalty \$8,386

12 TaxPenalty

13 As determined \$125,779.94 \$12,578.00

14 Adjustment - Sales and Use Tax Department -12,929.86 -1,293.00

- Appeals Division -28,985.26 -2,898.51

15 Proposed redetermination \$83,864.82 \$8,386.49

Less concurred -83,864.82 0.0016 Balance, protested \$0.00 \$8,386.49

17 Proposed tax redetermination \$83,864.82

Interest through 10/31/11 39,692.68

18 Negligence penalty 8,386.49

19 Total tax, interest, and penalty \$131,943.99

Payments -372.1920 Balance Due \$131,571.8021 Monthly interest beginning 11/01/11 \$417.4622 This matter was scheduled for Board hearing on November 11, 2010, but was postponed at
23 petitioner's request because his representative was out of state.24 **UNRESOLVED ISSUES**25 **Issue:** Whether petitioner was negligent. We conclude that he was.26 Petitioner has operated a gasoline station with a small mini-mart (merchandise is sold through a
27 window in the cashier's booth) since July 9, 2004. The only records petitioner provided at the time of
28 audit were copies of his sales and use tax returns for the audit period. At the appeals conference

1 petitioner also provided cash register receipts for August 2005 and August 2006, and incomplete cash
2 register receipts for May 2007 and September 2007. The Department imposed the negligence penalty
3 because petitioner did not provide adequate records. The Department also notes that petitioner
4 substantially understated his taxable sales. Petitioner disputes the penalty on the basis that he did not
5 intentionally understate his taxable sales. To explain his lack of records, petitioner states that he
6 moved twice during the audit period and his bookkeeper went out of business before the start of the
7 audit. In addition, by letter after the Decision and Recommendation was issued, petitioner further
8 asserts that he was not negligent because, he was an absentee owner, the business experienced changes
9 in personnel during the audit period, and this was petitioner's first audit.

10 We find the severe lack of records to be strong evidence of negligence, and petitioner has not
11 provided any documentation to support any of his explanations. We also find that the substantial
12 understatement of \$1,016,542, representing an error ratio of 13.73 percent when compared to reported
13 taxable sales, is evidence of negligence. The severity of the problems cannot be excused on the basis
14 that this was petitioner's first audit. We find petitioner was negligent and the penalty was properly
15 applied.

16 **RESOLVED ISSUE**

17 To establish audited gasoline sales, the Department used audited gallons of gasoline sold based
18 on petitioner's claimed sales tax prepaid to vendors, and used selling prices from reports issued by the
19 U.S. Department of Energy, reduced by 9.8 cents per gallon.¹ The Department estimated taxable mini-
20 mart sales at \$75 a day based on its visits to the business location. At the conference, petitioner
21 provided cash register receipts from the audit period for two months, and for some additional days in
22 two other months, to show his gasoline selling prices were lower than the audited gasoline selling
23 prices. After review of the cash register receipts, the Department recommended the measure of tax be
24 reduced from \$1,367,879 to \$1,016,542, and petitioner concedes that amount of understatement.

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26
27 ¹ The Department compared petitioner's selling prices observed on three separate days during the audit, with the
28 Department of Energy selling prices for the corresponding week, and computed that, on average, petitioner's selling prices
were 9.8 cents less than those reported by the Department of Energy.

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OTHER DEVELOPMENTS

None.

Summary prepared by Thea Etheridge, Business Taxes Specialist II