

**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: )

JERIES A. IZHAQ and NEMEH T. ZAROOUR, dba )  
Supermart Exxon )

Account Number: SR KHM 100-525760  
Case ID 423914

Petitioner )

Red Bluff, Tehama County

Type of Business: Gas station with mini-mart

Audit period: 05/11/05 – 03/31/07

<u>Item</u>	<u>Disputed Amount</u>
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Unreported taxable sales	\$1,463,602 <sup>1</sup>
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Tax as determined and protested:	<u>\$33,393.37</u>
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Proposed tax redetermination	\$33,393.37
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Interest through 11/30/09	<u>11,755.75</u>
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Total tax and interest	\$45,149.12
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Payments	44.00
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Balance Due	<u>\$45,105.12</u>
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Monthly interest beginning 12/1/09	<u>\$ 222.33</u>
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**UNRESOLVED ISSUE**

**Issue:** Whether adjustments are warranted to the audited understatement of reported taxable sales. We recommend no adjustment.

Petitioner operated a gas station with a mini-mart from May 11, 2005, until July 26, 2009, when petitioner discontinued the business with no successor. Based on its review of the records, the Department concluded that petitioner's recorded sales of fuel and mini-mart merchandise were substantially accurate. However, the Department found that petitioner had claimed the entire amount

<sup>1</sup> Petitioner protests the difference between the tax due on the unreported sales of fuel and a credit of \$71,370.00 allowed in the audit for unclaimed prepayments of sales tax paid to petitioner's fuel distributors. Since there is also a credit audit item of \$18,590 for unclaimed exempt sales to the U.S. Government, the protested tax of \$34,741.14 [(\$1,463,602 x 7.25%) - \$71,370.00] is somewhat greater than the amount of tax determined. Petitioner filed a claim for refund on June 15, 2007, which is timely for the entire audit period. (Rev. & Tax. Code § 6902.) Thus, if petitioner were to prevail in its petition, a refund of the tax paid on exempt sales to the U.S. Government could be made.

1 of fuel sales as tax-paid purchases resold on its sales and use tax returns, meaning it paid no sales tax  
2 with its returns on sales of fuel and that the only sales tax petitioner paid with respect to fuel sales was  
3 the amount of prepayments to its fuel vendors (for which petitioner did not claim the allowable credits  
4 on its returns). Apparently, petitioner's bookkeeper erroneously believed that petitioner's liability for  
5 sales tax on sales of fuel was limited to the amounts it had prepaid to fuel vendors.

6 The Department used petitioner's recorded sales tax accrued to establish audited sales of fuel of  
7 \$1,463,602. It then used purchase invoices, fuel vendors' reports, and the Board's records to establish  
8 the audited amount of unclaimed credits for sales tax prepayments to vendors of \$71,370.00.

9 Petitioner contends that it should not be held liable for the reporting errors made by its bookkeeper  
10 since it honestly believed that all sales had been reported accurately. Also, petitioner asserts that the  
11 Board should have noticed the error much sooner rather than waiting almost two years before notifying  
12 petitioner of the understatement. In addition, petitioner states that it is unable to pay the audit liability.

13 The audit liability was established using petitioner's own records, specifically an analysis of  
14 petitioner's recorded sales tax accrued. Petitioner has not provided any evidence to show that the sales  
15 tax accrual account contained errors that may have resulted in overstated audited taxable sales. In fact,  
16 petitioner has not provided any specific argument that the audited amount of fuel sales of \$1,463,602 is  
17 incorrect. As for petitioner's contention that it relied on its bookkeeper, it was petitioner's duty to  
18 review the reported amounts for accuracy. Petitioner's apparent failure to verify the reported figures  
19 does not excuse petitioner from the liability resulting from not having properly reported its taxable  
20 sales. Finally, neither the contention that the Board should have notified it of this reporting error  
21 sooner or petitioner's business and economic difficulties provide any basis for adjustment.<sup>2</sup>

## 22 OTHER DEVELOPMENTS

23 None.

24  
25 Summary prepared by Deborah A. Cumins, Business Taxes Specialist III

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27 <sup>2</sup> Petitioner made a settlement proposal, but by letter dated September 30, 2008, the Settlement Section advised petitioner  
28 this case is not conducive to settlement. In its request for a Board hearing, petitioner stated that it had planned to file an  
offer in compromise, but it had been advised to participate in a Board hearing first.