

1 CALIFORNIA STATE BOARD OF EQUALIZATION

2 APPEALS DIVISION SUMMARY FOR BOARD HEARING

3 In the Matter of the Petition for Redetermination)
 4 Under the Sales and Use Tax Law of:)
 5 CONVENIENCE ACQUISITION CO. LLC) Account Number: SR Y KH 97-272888
 6) Case ID 236133
 6 Petitioner) Sacramento, Sacramento County

7 Type of Business: Gas station with mini-mart

8 Audit Period: 1/1/00 – 12/31/02

9 <u>Item</u>	<u>Disputed Amount</u>
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10 Rebates received from cigarette manufacturers	\$4,196,416
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11 Tax

12 As determined	\$705,451.10
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Adjustment - Appeals Division	- 5,762.99
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13 Proposed redetermination	\$699,688.11
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Concurred in	-381,111.20
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14 Protested	<u>\$318,576.91</u>
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15 Proposed tax redetermination	\$699,688.11
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Interest through 1/31/09	<u>254,879.87</u>
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16 Total tax and interest	\$954,567.98
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Payments	-606,875.90
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17 Balance due	<u>\$347,692.08</u>
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18 Monthly interest beginning 2/1/09	<u>\$618.75</u>
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19 This matter had been previously scheduled several times since January 31, 2008, but was
 20 postponed to allow other similar cases to be decided, deferred for further review of the Board's
 21 March 18, 2008 decision in a similar case, pulled by a Board member for further review of submitted
 22 documentation, and postponed because petitioner's counsel had other cases to argue before the Board.

23 UNRESOLVED ISSUE

24 **Issue:** Whether rebate payments received by petitioner from cigarette manufacturers are
 25 additional taxable gross receipts related to the taxable sale of cigarettes. We conclude that the rebate
 26 amounts received by petitioner from third-party manufacturers constitute taxable gross receipts.

27 The Sales and Use Tax Department (Department) found that petitioner received cigarette
 28 rebates from several cigarette manufacturers which required petitioner to reduce the selling price of the

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1 cigarettes by the entire amount of the rebate. The Department found that petitioner had received a total
2 of \$4,196,416 in such rebates from these manufacturers. Petitioner did not report any of the rebates as
3 taxable gross receipts. Accordingly, the Department established an audited understatement of reported
4 taxable measure of \$4,196,416.

5 Petitioner raised several contentions why the rebates should not be subject to tax, each of which
6 is addressed in the Decision and Recommendation, in which we conclude that petitioner's contentions
7 do not warrant any adjustments to the protested tax. This appeal had been deferred pending the
8 Board's adoption of California Code of Regulations, title 18, section (Regulation) 1671.1. While the
9 rebates here would be taxable under Regulation 1671.1, that regulation is prospective to periods
10 beginning October 1, 2007, and therefore does not apply to this appeal. At its March 18, 2008
11 meeting, the Board heard appeals of assessments of tax on the same type of rebates at issue here where
12 the taxpayers argued that Regulation 1671.1 should be interpreted to mean that the rebates were *not*
13 taxable prior to October 1, 2007. However, the Board had consistently held that such rebates are
14 taxable (which is the reason the Decision and Recommendation here holds that the rebates are taxable),
15 and the regulation in no way reverses those prior holdings. Nevertheless, the Board took note of the
16 possible confusion about the issue and concluded that the subject rebates should be regarded as taxable
17 only for periods commencing January 1, 1999, which is after the Board had disseminated information
18 clearly explaining to taxpayers that these rebates are subject to tax.

19 Here, the period at issue is entirely after January 1, 1999, so the Board's decision on March 18,
20 2008, does not alter the result. We therefore recommend no adjustment for this issue.

21 AMNESTY

22 The 50 percent amnesty interest penalty under Revenue and Taxation Code section 7074,
23 subdivision (a), is not applicable in this case because petitioner filed an application for amnesty and
24 entered into a qualifying installment payment plan.

25 OTHER DEVELOPMENTS

26 None.

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28 Summary prepared by Rey Obligacion, Business Taxes Specialist III