

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 KNA CHO CORPORATION,) Account Number SR EH 52-043548
 dba Joey's Pizza) Case ID's 611137, 658121
 6 Petitioner) Ontario, San Bernardino County

7 Type of Business: Restaurant

8 Liability periods: 07/01/08 – 05/30/10 (Case ID 611137)

9 06/01/10 – 06/30/11 (Case ID 658121)

10 <u>Item</u>	<u>Case ID 611137</u>	<u>Case ID 658121</u>		
11 Unreported taxable sales	\$139,905	\$93,490		
	<u>611137</u>	<u>658121</u>		
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
13 As determined and protested	\$17,886.76	\$1,788.70	\$12,483.47	\$1,248.35
14 Post-D&R adjustments	- 6,165.79	-1,788.70	- 4,303.08	-1,248.35
Proposed redetermination	<u>\$11,720.97</u>	<u>\$ 00.00</u>	<u>\$8,180.39</u>	<u>\$ 00.00</u>
15 Proposed tax redetermination	\$11,720.97		\$8,180.39	
16 Interest through 10/31/14	<u>3,899.21</u>		<u>1,841.89</u>	
17 Total tax, and interest	<u>\$15,620.18</u>		<u>\$10,022.28</u>	
18 Monthly interest beginning 11/01/14	<u>\$ 58.60</u>		<u>\$ 40.90</u>	

19 This matter was scheduled for Board hearing in August 2014, but was rescheduled at
 20 petitioner's request due to a scheduling conflict.

21 **UNRESOLVED ISSUE**22 **Issue:** Whether further reductions are warranted to the amounts of unreported taxable sales.

23 We find no further reductions are warranted.

24 Petitioner has operated a restaurant since March 2006 serving hot food products such as pizza,
 25 pasta, chicken, and steak. The restaurant is open seven days a week. Two Notices of Determination
 26 are at issue. Both determinations were the result of field billing orders (FBO's) issued after an
 27 examination of petitioner's books and records. The Sales and Use Tax Department (Department)
 28 issued the first determination for the period July 1, 2008, through May 30, 2010, due to an expiring

1 statute of limitations waiver. The Department issued the second determination for the period June 1,
2 2010, through June 30, 2011, after completing its examination. For the FBO periods, petitioner
3 provided its federal income tax return for 2008, some merchandise purchase invoices, daily sales
4 summaries, and bank statements. Petitioner did not provide any guest checks or cash register tapes to
5 support the sales recorded in its daily sales summaries. The Department found that total sales recorded
6 in the sales summaries substantially agreed with total sales reported on the sales and use tax returns.
7 However, the Department also found that gross receipts reported on the federal income tax return
8 exceeded total sales reported on the sales and use tax return for 2008. Further, the Department
9 concluded that gross receipts reported on the federal income tax return for 2008 were also understated.
10 Consequently, the Department concluded that petitioner's books and records were not reliable and that
11 recorded sales were understated. Thus, the Department decided to establish audited taxable sales using
12 a credit card sales ratio analysis.

13 On October 13, 2011, from 10:14 a.m. to 8:45 p.m. the Department observed petitioner's
14 business operations. Using the cash register tape, the Department calculated a ratio of credit card sales
15 to total sales of 47.58 percent. Similarly, for the period October 14, 2011, through October 19, 2011,
16 petitioner used cash register tapes to calculate a credit card sales ratio of 45.72 percent. The
17 Department combined the results to calculate a credit card sales ratio of 45.87 percent, and it used that
18 percentage and recorded credit card deposits to establish unreported taxable sales of \$356,170 for both
19 FBO periods combined. In preparing these matters for Board hearing, we found that both the
20 Department and Appeals had concluded that petitioner's credit card sales ratio for "catering sales"
21 would be higher than the credit card sales ratio of 45.87 percent, but the Department had not
22 incorporated that higher ratio in its audit computations. Consequently, after further consideration, the
23 Department conducted a reaudit that allowed a credit card sales ratio of 70 percent on catering sales
24 that resulted in a reduction of unreported taxable sales to \$233,395 for both FBO periods combined.

25 Petitioner contends that taxable sales were properly reported for the FBO periods. Further,
26 petitioner asserts that there was duplication in the measure of unreported taxable sales established for
27 the period April 1, 2010, through May 30, 2010, in a separate NOD that was allegedly issued to sole
28 proprietor Kyung S. Cho (SR EH 100-731448). We find the evidence petitioner provided insufficient

1 to support its contention that taxable sales were properly reported. Also, we find the adjustment
2 allowing a higher credit card sales ratio for catering sales was favorable to petitioner, especially since
3 this adjustment was made in the absence of supporting evidence. Petitioner has not provided any
4 documentation to support any additional adjustments. Further, we find the NOD issued to the sole
5 proprietor was cancelled and that there was no duplication in the measure of unreported taxable sales.
6 Accordingly, we find no further reductions are warranted.

7 **RESOLVED ISSUES**

8 At the conference, the Department recommended deletion of the negligence penalties on the
9 basis it was petitioner's first audit and because the Department concluded that petitioner made a
10 reasonable effort to properly report its taxable sales by hiring an accountant to prepare its sales and use
11 tax returns. We concur in the Department's recommendations and we recommend the penalties be
12 deleted.

13 **OTHER MATTERS**

14 None.

15 Summary prepared by Ted Matthies, Business Taxes Specialist III
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