

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for)
Redetermination and Administrative Protest)
Under the Sales and Use Tax Law of:)
Account Number SR JH 97-228595)
Case ID's 546372, 436517)
JIALING WANG, dba Golden Penny Restaurant)
Petitioner/Taxpayer¹) Ukiah, Mendocino County

Type of Business: Restaurant

Audit periods: 04/01/07 – 03/31/10 (Case ID 546372)
01/01/04 – 03/31/07 (Case ID 436517)

<u>Item</u>	<u>Disputed Amount</u>			
	<u>546372</u>		<u>436517</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
Unreported taxable sales	\$ 98,045 (Case ID 546372)			
			\$393,222 (Case ID 436517)	
Negligence penalty	\$ 791 (Case ID 546372)			
			\$ 2,947 (Case ID 436517)	
As determined	\$7,908.80	\$790.91	\$34,474.72	\$3,447.47
Finality penalty				3,447.47
Pre-D&R adjustment	<u>00.00</u>	<u>00.00</u>	<u>- 5,009.17</u>	<u>-1,002.05</u>
Proposed redetermination, protested	<u>\$7,908.80</u>	<u>\$790.91</u>		
Adjusted determination, protested			<u>\$29,465.55</u>	<u>\$5,892.89</u>
Proposed tax redetermination/adjusted tax		\$ 7,908.80		\$29,465.55
Interest through 07/31/14		3,055.23		19,818.07
Negligence penalty		<u>790.91</u>		2,946.55
Finality penalty				<u>2,946.34</u>
Total tax, interest, and penalty		<u>\$11,754.94</u>		\$55,176.51
Payments				<u>- 853.64²</u>
Balance Due				<u>\$54,322.87</u>
Monthly interest beginning 08/01/14		<u>\$ 39.54</u>		<u>\$ 143.06</u>

¹ For ease of reference, we refer to Mr. Wang as "petitioner" throughout the summary, even when discussing the earlier audit period, for which a timely petition for redetermination was not filed.

² Petitioner has not filed a claim for refund of any of these payments. Since the payments were made on various dates during the period April 2, 2007, through February 19, 2009, the time for filing a timely claim for refund has passed. (See Rev. & Tax. Code, § 6902.)

1 Petitioner provided incomplete records for audit, and the Department found discrepancies
2 between the amounts reported for sales tax purposes and those reported for income tax purposes.
3 Further, for the latter period, the Department computed a book markup of about 145 percent, which
4 was lower than the markup it expected for a restaurant (at least 200 percent). For both audit periods,
5 the Department used a credit card analysis to establish audited taxable sales. The Department used the
6 results of a one-day observation test in each audit to compute percentages of credit card sales to total
7 sales of 31.99 percent for the latter period and 20.03 percent for the earlier period. The Department
8 used those percentages and recorded credit card deposits to compute audited taxable sales, which it
9 compared to reported amounts to compute understatements of \$98,044 for the latter period and
10 \$460,070 for the earlier period. After the NOD was issued for the earlier period, the Department
11 conducted a second observation test and combined the results of the two observation tests to compute a
12 ratio of credit card sales to total sales of 21.60 percent, which it used to compute the understatement of
13 taxable sales of \$393,222 established in the reaudit.

14 For both audit periods, petitioner contends that the audited sales are unrealistic, asserting that
15 there is an over-supply of restaurants in Ukiah, with one restaurant for every 50 people, and that
16 comparable restaurants in Ukiah do not have the sales volume established in the audit. Petitioner
17 argues that it is not reasonable to use the results of a one-day observation test to establish audited sales
18 for the audit period. For the earlier period, petitioner asserts that the restaurant's business had
19 improved after the audit period, and thus the test of a day after the audit period was not representative.
20 For the latter period, petitioner asserts that the one-day test is not representative because the economy
21 had declined 30 percent since its prior audit.

22 Petitioner has provided no evidence to support his contention that audited taxable sales are
23 unrealistic. In that regard, the Department has provided average quarterly reported sales for five
24 Chinese restaurants in the area for the period July 1, 2009, through June 30, 2010, which range from
25 \$23,029 to \$57,722. The average amount of sales per quarter of \$40,809 in the Department's audit of
26 petitioner for the latter period, April 1, 2007, through March 31, 2010, is within that range.
27 Consequently, we find the evidence does not show that audited sales are unreasonable.

1 Regarding petitioner's assertion that it was not reasonable to use the results of a one-day
2 observation test to establish audited sales, we note that audited sales were based primarily on
3 petitioner's recorded credit card deposits for each audit period. The Department used the results of the
4 observation tests (a one-day test for the latter period and a two-day test for the earlier period) only to
5 establish ratios of credit card sales to cash sales. Petitioner has provided no evidence that the
6 percentages of patrons paying with credit cards were significantly lower on the three observation days
7 than they were during the remainder of the audit period. Moreover, for the earlier audit period, the
8 ratios of credit card sales to total sales remained relatively consistent for the two days tested, with an
9 average of about 21 percent. That consistency is evidence that the ratio is representative. In addition,
10 for the latter period, the percentage of credit card sales, based on a one-day test, was about 32 percent,
11 which is greater than the two-day test for the earlier audit period. Further, we note that the dates of the
12 two observation tests for the audit of the earlier period were both during the latter audit period (April 4,
13 2007, and December 19, 2007). Thus, we find that the available evidence regarding the latter period
14 does not support an increase of the credit card ratio from the 32 percent computed for the one-day
15 observation test. Regarding petitioner's assertion that its sales decreased by 30 percent since the prior
16 audit period, the audit results are consistent with petitioner's estimate, since audited average quarterly
17 sales decreased about 26 percent from the earlier audit period to the latter audit period.

18 We find that the Department used a recognized audit procedure to establish audited taxable
19 sales, and we have found no apparent errors in either audit. Petitioner has provided no evidence to
20 support further adjustments, and we recommend none.

21 **Issue 2:** Whether petitioner was negligent. We find that the understatements established for
22 both audit periods were the result of negligence.

23 The Department imposed negligence penalties because petitioner's records were inadequate.
24 For the earlier audit period, petitioner provided no records other than income tax returns and bank
25 statements, and he reported estimated amounts of sales. For the latter audit period, although he
26 provided limited records, the Department found that petitioner continued to understate the amount of
27 cash sales reported, as he had in the earlier audit period. Petitioner did not specifically dispute the
28

