

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 REBHYA ABDELJAWAD,) Account Number: SR EH 100-252042
 6 dba Chino Smoke Shop) Case ID 553035
 7 Petitioner) Chino, San Bernardino County

8 Type of Business: Tobacco retailer

9 Audit period: 4/1/07 – 12/31/08

10 Item Disputed Amount

11 Unreported taxable sales \$380,534
 12 Unreported taxable self-consumption \$8,064
 13 Unreported taxable cigarette rebates \$9,688
 14 Negligence penalty \$3,087

	<u>Tax</u>	<u>Penalty</u>
15 As determined and protested	<u>\$30,867.18</u>	<u>\$3,086.75</u>
16 Proposed tax redetermination	\$30,867.18	
17 Interest through 10/31/12	10,665.36	
18 Negligence penalty	<u>3,086.75</u>	
19 Total tax, interest, and penalty	<u>\$44,619.29</u>	
20 Monthly interest beginning 11/1/12	<u>\$154.34</u>	

21 A Notice of Appeals Conference was mailed to petitioner's address of record, and the notice
 22 was not returned by the Post Office. Petitioner did not respond to the notice or appear at the appeals
 23 conference, which was held as scheduled. We thereafter sent petitioner a letter offering her the
 24 opportunity to provide any additional arguments and evidence in writing she wished us to consider, but
 25 she did not respond.

26 UNRESOLVED ISSUES

27 **Issue 1:** Whether adjustments are warranted to the audited understatements of taxable measure.

28 We conclude that no adjustments are warranted.

1 Petitioner operated a smoke shop selling cigarettes and other tobacco-related products since
2 July 30, 2003, and closed out effective December 31, 2008. She provided for audit federal income tax
3 returns and incomplete purchase information, but no sales records. The Sales and Use Tax Department
4 (Department) compared total sales petitioner reported on sales and use tax returns with the gross
5 receipts she reported on income tax returns and noted only minor differences, but concluded the
6 recorded amounts were unreliable because petitioner indicated that the cost of goods sold reported on
7 the income tax returns were estimated. The Department decided to compute petitioner's taxable sales
8 based on prior audit information.¹

9 The Department noted that the taxable sales reported for the current audit were consistent and
10 comparable to the taxable sales reported during the last five quarters of the prior audit. It used the
11 audited taxable sales of \$501,013 for the last five quarters of the prior audit to compute quarterly
12 average taxable sales of \$100,203, compared the \$100,203 to reported taxable sales for each quarterly
13 period in the current audit, and computed understatement error rates ranging from 121 to 165 percent
14 resulting in unreported taxable sales of \$380,534. Since the computations from the prior audit
15 included an allowance for self consumption averaging \$1,152 per quarter, the Department concluded
16 that, similar to the prior audit, a separate measure of tax of \$8,064 must be added for \$1,152 of
17 unreported self consumption of taxable merchandise per quarter. Finally, since the Department found
18 that petitioner's operations for the current audit period were comparable to operations during the prior
19 audit period, it concluded that petitioner also received a similar amount of taxable cigarette rebates in
20 the current audit period as during the prior period. Since petitioner did not provide documentation
21 regarding her cigarette rebates received during the current audit period, the Department used the
22 quarterly average unreported taxable cigarette rebates for the last five quarterly periods of the prior
23 audit of \$1,384 to compute unreported taxable cigarette rebates for the current audit period of \$9,688.

24 _____
25 ¹ For petitioner's prior audit of the period July 30, 2003, through March 31, 2007, the Department computed audited
26 markups of 15.64 and 19.05 percent for cigarettes and other tobacco-related merchandise, respectively; compiled audited
27 purchases for 2006 and made adjustments for self-consumption and shrinkage to compute audited cost of goods sold;
28 applied the audited markups to the audited cost of goods sold for 2006 to compute audited taxable sales for 2006; compared
audited taxable sales for 2006 to reported taxable sales and computed an understatement; and applied the 173.34 percent
error rate for 2006 to reported taxable sales for the audit period to compute unreported taxable sales for that prior audit
period of \$834,933.

