STATE BOARD OF EQUALIZATION
SALES AND USE TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Petition for Redetermination Under the Sales and Use Tax Law of:

JULIA BARRANCO

Petitioner

Account Number: SR AP 97-071172
Case ID 552756

Hacienda Heights, Los Angeles County

Type of Business: Catering truck

Audit period: 10/01/06 – 12/31/09

Item	Disputed Amount
Unreported taxable sales	$121,457
Negligence penalty	$ 934

	Tax	Penalty
As determined	$13,623.69	$1,362.37
Post-D&R adjustments	- 4,281.40	- 428.09
Proposed redetermination	$ 9,342.29	$ 934.28

Proposed tax redetermination	$9,342.29
Interest through 7/31/13	3,244.05
Negligence penalty	934.28
Total tax, interest, and penalty	$13,520.62
Less payments	- 99.00
Balance due	$13,421.62
Monthly interest beginning 8/1/13	$ 46.22

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

UNRESOLVED ISSUES

Issue 1: Whether adjustments are warranted to the amount of unreported taxable sales. We find no further adjustments are warranted.

Petitioner has operated a catering truck selling hot food, snacks, and beverages since 1997. For audit, petitioner provided federal income tax returns (FITR's), bank statements, and a summary of merchandise purchases from petitioner's main supplier. The Sales and Use Tax Department (Department) found that the gross receipts reported on petitioner's FITR for 2006 substantially exceeded total sales reported on her sales and use tax returns for that year, but the gross receipts reported on FITR's for 2007 and 2008 reconciled with petitioner's reported total sales for those two years. Upon review of petitioner's bank statements, the Department found that petitioner failed to make deposits into the business bank accounts for some months, and deposits exceeded reported sales in other months. In the absence of reliable records, the Department considered observing petitioner's business for a test period of one day or more to establish audited taxable sales, but petitioner objected to an observation test. Petitioner asked the Department to use the results of her prior audit for the period April 1, 2002, through March 31, 2005 to compute taxable sales for the current audit. A comparison of audited taxable sales from the prior audit with purchases from the main supplier for that audit showed a markup of 156 percent.[1] The Department added a markup of 156 percent to merchandise purchases of $39,060 shown in the vendor summary for the period January 2, 2008, through January 14, 2009, to compute taxable sales of $100,105 for one year, or $25,026 per quarter ($100,105 ÷ 4), on average.[2] The Department then multiplied taxable sales of $25,026 per quarter by 13 quarters in the audit period to compute audited taxable sales of $325,338, which exceeded reported taxable sales of $169,621 for the same period by $155,717.

Even though average audited taxable sales of $25,026 per quarter for this audit period are $5,126 less than average quarterly audited taxable sales of $30,152 from the prior audit period, the Department decided that adjustments could be warranted based on petitioner's assertion in her petition for redetermination that, due to the economic recession, her sales for 2008 and 2009 were significantly

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[1] In the prior audit and the audit at issue, the Department concluded that petitioner purchased merchandise from unknown vendors in addition to merchandise purchased from the main supplier. In the prior audit, the Department established audited taxable sales based on the results of a one-day observation test, and then computed merchandise purchases from the main supplier and estimated amounts for missing merchandise purchases, wages, truck fuel, and other expenses, to verify that audited taxable sales were reasonable.

[2] The Department made no adjustment to purchases for the cost of self-consumed merchandise or for pilferage. We find no adjustments are warranted because the markup of 156 percent was computed from a comparison of audited taxable sales with unadjusted merchandise purchases from the prior audit period. Therefore, it was correct to apply the markup to unadjusted merchandise purchases for the audit period at issue.

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lower than her sales from the prior audit period. The Department first added the audited markup of 156 percent to merchandise purchases of $70,024 for the period of May 31, 2007, through March 30, 2009, to compute audited taxable sales of $179,261. The Department then multiplied average monthly taxable sales of $8,148 ($179,261 ÷ 22 months) by 30 months to compute audited taxable sales of $244,440 for the period October 1, 2006, through March 31, 2009. For the period April 1, 2009, through September 30, 2009, the Department added the audited markup of 156 percent to merchandise purchases of $12,145 for that period to compute audited taxable sales of $31,091, or $15,546 per quarter. The Department multiplied that amount by three quarters to compute audited taxable sales of $46,638 for the period April 1, 2009, through December 31, 2009. In total, the Department recommends that audited taxable sales be reduced to $291,078 ($244,440 + $46,638) for the audit period, which exceeds reported taxable sales of $169,621 by $121,457.

Regarding the impact that the economic downturn had on petitioner's business, we find that a reduction in petitioner's merchandise purchases resulted in a reduction to audited taxable sales in the Department's analysis, and no further adjustments to account for the impact of the economic downturn are warranted. However, while petitioner did not raise the issue of tax-paid purchases resold, we noted that the merchandise purchase statements from petitioner's main supplier indicated that petitioner paid sales tax reimbursement to the supplier for some of her purchases. Therefore, we recommended a reaudit to give petitioner credit for the sales tax reimbursement she paid. The reaudit results in a credit measure of $12,863 for the cost of tax-paid purchases resold, which reduces the overall deficiency measure from $121,457 to $108,594. In the absence of other evidence, we find no further adjustments are warranted.

Issue 2: Whether petitioner was negligent. We conclude that she was.

The Department imposed the negligence penalty because petitioner's records were incomplete and unreliable, the reporting error rate is substantial, and similar errors were found in petitioner's prior two audits. Petitioner has not specifically disputed the negligence penalty.

Petitioner provided no purchase records or sales records for the audit period. Therefore, we find that she was negligent in keeping records. The understatement of $108,694, which represents a reporting error rate of 64 percent, is significant and is further evidence of negligence. Moreover, petitioner made the same types of errors in this audit period as she made in the prior two audit periods. We find that petitioner's failure to improve the accuracy of her reporting is strong evidence of negligence. Therefore, we conclude that the penalty was properly applied.

OTHER MATTERS

None.

Summary prepared by Lisa Burke, Business Taxes Specialist III

MARKUP TABLE
CATERING TRUCK

Percentage of taxable vs. nontaxable purchases	Unknown
Mark-up percentages developed	156%
Self-consumption allowed in dollars	None*
Pilferage allowed in dollars	None*

* Since the markup of 156 percent was computed from a comparison of audited taxable sales with unadjusted merchandise purchases from the prior audit, we find that no reduction to the known purchases from the main supplier to allow for self-consumption or pilferage is warranted.

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