

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 CHARLES HANH ENTERTAINMENT, LLC,)
6 dba 1/4 Giant Burger)

7 Petitioner)

Account Number: SR CH 100-465822
Case ID 539706

Hayward, Alameda County

8 Type of Business: Fast-food restaurant

9 Audit period: 01/01/07 – 12/31/09

10 Item Disputed Amount11 Unreported taxable sales \$963,338
12 Negligence penalty \$ 8,609

	<u>Tax</u>	<u>Penalty</u>
13 As determined	\$99,539.14	\$9,953.97
14 Post-D&R adjustments	<u>-13,445.09</u>	<u>- 1,344.57</u>
15 Proposed redetermination	<u>\$86,094.05</u>	<u>\$8,609.40</u>
16 Proposed tax redetermination	\$86,094.05	
17 Interest through 12/31/13	34,455.78	
18 Negligence penalty	<u>8,609.40</u>	
Total tax, interest, and penalty	\$129,159.23	
Payments	<u>1,306.85</u>	
Balance due	<u>\$127,852.38</u>	

19 Monthly interest beginning 01/01/14 \$ 423.94

20 A Notice of Appeals Conference was mailed to petitioner at its address of record, and the
21 notice was not returned by the Post Office. Petitioner did not respond to the notice or appear at the
22 appeals conference, which was held as scheduled. We thereafter sent petitioner a letter offering it the
23 opportunity to provide any additional arguments and evidence in writing it wished us to consider, but
24 petitioner did not respond. This matter was scheduled for Board hearing in September 2013, but was
25 postponed at petitioner's request for additional time to prepare for the hearing.

26 **UNRESOLVED ISSUES**

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

1 Petitioner operated a fast-food restaurant selling hamburgers, hot dogs, fries, pies, milk shakes,
2 and sodas for dining in or “to-go,” 24 hours a day, seven days a week, from October 2004 through June
3 2011. Petitioner collected sales tax reimbursement for all of its sales. For audit, petitioner provided
4 sales journals, cash register z-tapes, and one federal income tax return. The Sales and Use Tax
5 Department (Department) computed that petitioner’s reported sales averaged \$250 per day,
6 or just over \$10 per hour, which seemed extremely low. The Department’s examination of petitioner’s
7 sales journals showed recorded total sales of \$510,156 for the audit period, which exceeded
8 petitioner’s reported total sales of \$269,575 by \$240,581. The Department compared totals shown in
9 the cash register z-tapes with the amounts recorded in the sales journals and found discrepancies.
10 While the Department noted that petitioner had two cash registers, one was not working, and the
11 Department was unable to determine when it had ceased functioning. Therefore, the Department was
12 unable to determine whether petitioner had provided all of its cash register tapes. Given unreliable
13 records and strong evidence that petitioner’s reported sales were understated, the Department decided
14 to perform a site observation test to establish audited sales.

15 Based on observations of petitioner’s business operations on four days, for periods ranging
16 from 11 hours to 16 hours per day, the Department computed average hourly sales of about \$52, and
17 average daily sales of \$1,240 ($\52×24 hours), which it used to establish unreported taxable sales of
18 \$1,113,781 in the original audit. Petitioner argued that its average hourly sales at night and in the early
19 morning were less than its average hourly sales during the site observation tests, and provided cash
20 register tapes for portions of 211 days from December 15, 2009, through March 9, 2011, to support its
21 contention that audited taxable sales were overstated. In a pre-conference reaudit, the Department
22 added the sales it observed during each hour of its four-day observation test to the sales shown in the
23 cash register tapes, hour by hour, and computed average sales for each hour in a 24-hour period
24 (ranging from \$3 for the hour from 3:00 to 4:00 a.m. to \$104 for the hour from 12:00 to 1:00 p.m.) and
25 about \$49 per hour overall, which resulted in audited average daily sales of \$1,185. The Department
26 then compared audited taxable sales of \$106,669 per quarter ($\$1,185 \times 90$ days) for the five quarters
27 from the fourth quarter of 2009 through the fourth quarter of 2010 with petitioner’s average quarterly
28 reported taxable sales for the same period to compute an error rate of 357 percent, which it applied to

